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# LEGAL HISTORY

OF THE ENTIRE SYSTEM

— OF —

## Nashville, Chattanooga & St. Louis Ry. AND POSSESSIONS.

Including and discussing the Charters, Amendments, Rights, Privileges,  
and Franchises of main stem and branches; By-laws, Mortgages,  
Abstract of Title to every branch acquired, showing width  
of right of way, distance built, deeds or leases to, and  
mortgages on same; laws and decisions relating to right of way, internal organization, meetings, etc., as well as

### GENERAL POWERS

— IN —

Alabama, Georgia, Kentucky and Tennessee.

---

— BY —

**J. D. B. DeBOW,**

*Of the Nashville Bar.*

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## DEDICATION.

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IN the preparation of this lego-historic treatise on the Nashville, Chattanooga & St. Louis Railway and possessions, one could not but be impressed with the magnitude of its present proportions, and the stupendous labors and financiering that must have been expended in its development. From a mere connecting link between Nashville & Chattanooga, it has gradually spread out and expanded until now it forms one of the important railway systems of the South. The old landmarks along its right of way are fast disappearing; the primitive *wood* engine has given place to the modern leviathan of the rail; the hills and angles of infancy have been toned down to conform to scientific grades and curves; the crude day coaches of the past have been supplanted by moving palaces for commerce and transportation. To no one man or set of men can be attributed all this. Board after board of directors have performed their duty nobly and passed into the silent beyond. Presidents, general counsel, general managers, civil engineers, treasurers, and hosts of employes have all labored conscientiously and well to bring about this success. In the archives of the company may be found volumes in their praise. Without, therefore, intending invidious comparisons, but with a full consciousness and sincere appreciation of all such able services, it is yet my pleasant privilege to dedicate this work to him who, in my humble opinion, and after a careful and exhaustive review of the expansion and development of the road, is most entitled to be remembered as having shaped, controlled, and wrought its present destiny. Actuated by these motives, as well as by sincere personal esteem and regard, this volume is respectfully dedicated to the president of the company—J. W. Thomas. A history of the road is almost a history of his life's work.

J. D. B. DeBow.





## PREFACE.

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The Nashville, Chattanooga & St. Louis Railway was originally chartered by the acts of the General Assembly of the State of Tennessee, 1845-6, chapter 1, for the purpose of constructing a railroad from Nashville to Chattanooga, a distance of 151 miles. After its completion and in exemplification of the theory of the "survival of the fittest," it has gradually spread out by absorption and expansion until now it comprises a system of 1,188.75 miles of main track and 255.62 miles of sidings, distributed as follows: In Tennessee, 875.02 miles main track and 212.88 miles of siding; in Alabama, 114.15 miles main track and 19.29 miles of siding; in Georgia, 142.25 miles main track and 13.07 miles of siding; in Kentucky, 57.33 miles main track and 10.38 miles of siding, making a grand total of 1,444.37 miles of main and side tracks now being operated. It is a fact worthy of comment that of the 2,998.22 miles of railroad in the state of Tennessee, operated by forty-eight different companies, the mileage of the Nashville, Chattanooga & St. Louis Railway more than doubles that of any other company and amounts to nearly one-third of their combined mileage.

The present work was undertaken with a view of furnishing a complete legal history of this entire system; a full and accurate abstract of title to every branch acquired, whether by lease, construction or purchase, showing width of right of way, when and how acquired, legality thereof, distance built, together with the deeds or leases to and mortgages on the same; the laws, both legislative and judicial, relating to its right of way, internal organization, and corporate powers; the charters, amendments, by-laws, general powers, rights, privileges, and franchises of the main stem and branches in the various states through which the road or any part thereof runs, as well as

the supreme court decisions of all the states and of the United States construing them or similar ones.

The magnitude of the undertaking may better be appreciated when it is understood that it derives those powers, rights, privileges, and franchises from four different states, and from twenty-nine different charters, to say nothing of numerous amendments and enabling acts, the mere compilation of which was by no means a small proportion of the labors of the work. By far the greater number were granted by special enactments, extending over a period from 1845 in Tennessee, 1844 in Alabama, 1836 in Georgia, and 1851 in Kentucky, to the present time. The dates mentioned being those of the incorporation by the respective states of the oldest companies whose railroads, franchises, etc., have subsequently been acquired by the Nashville, Chattanooga & St. Louis Railway. The collection of all this was rendered more difficult by virtue of the fact that prior to the constitution of 1870 in Tennessee, and until comparatively a recent date in the other states, the caption of the acts gave no indication of their contents, thus necessitating the reading, word by word, of the entire legislative enactments of each successive general assembly of the respective states between the dates mentioned. This has been carefully and conscientiously done, for upon it the value of the work depends. Only a small part of the present mileage of the company is operated under the franchises acquired by the original charter and amendments of the Nashville, Chattanooga & St. Louis Railway proper. In fact, only that part between Nashville and Chattanooga. The balance, which amounts to nearly nine-tenths of the mileage, is operated under the rights, privileges, and franchises granted by the respective states to the original twenty-six or seven companies whose roads, franchises, etc, have since been acquired by lease or purchase. The importance of carefully compiling their charters, amendments, and enabling acts, therefore, is as great as compiling those of the dominant company, for, in ascertaining the powers, rights, privileges, and franchises of the Nashville, Chattanooga & St. Louis Railway over the line of those roads, regard must always be had to their charters, amendments, and

enabling acts, as well as the laws of the respective states affecting them. In other words, as to the lines of the roads so purchased or leased, the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers, rights, privileges, and franchises, and subject to all the duties and liabilities, except as otherwise provided by statute, as the original company or companies had. To illustrate: If a company whose road, franchises, etc., were purchased, had the power to sell or lease, then the Nashville, Chattanooga & St. Louis Railway, as the legal purchaser thereof, would also have those powers over the line of that particular road, as fully and completely as the original company had. All of this is more fully explained in succeeding pages.

The work embraces all acts of the legislatures of the states of Tennessee, Alabama, Georgia, and Kentucky, bearing on the subjects treated, up to and including those of Tennessee, 1899; those of Alabama, 1898-99; those of Georgia, 1898, and those of Kentucky, 1897, which are the latest acts of the respective states. It also embraces all similar supreme court decisions of the same states up to and including 101 Tenn.; 117 Ala.; 104 Ga., and 99 Ky., as well as similar decisions of the supreme court of the United States up to and including 170 U. S.

The work is the result of years of labor and thought, and though it can hardly be expected that it will be perfectly free from errors, yet it is hopefully as well as trustfully launched upon its mission with the consciousness that the best efforts of the author were expended in order to render it so.





# LIST OF STATIONS

ON THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY, BY DIVISIONS,  
SHOWING DISTANCE OF EACH, RESPECTIVELY,  
FROM NASHVILLE, TENN.

## CHATTANOOGA DIVISION.

Stations.	Miles from Nashville.
Chattanooga.....Tenn.	151
Cravens.....	149
Lookout.....	147
Wauhatchie.....	145
Hooker.....Ga.	141
Etna Mines.....Tenn.	137
Whiteside.....	137
Vulcan.....	134
Ladds.....	130
Shellmound.....	129
Carpenter.....Ala.	125
Bridgeport.....	123
Hollvar.....	117
Stevenson.....	112
Bass.....	106
Anderson.....Tenn.	102
Sherwood.....	96
T. C. Junction.....	87
Cowan.....	87
Decherd.....	82
Estill Springs.....	77
Tullahoma.....	70
Normandy.....	62
Cortner.....	61
Haley.....	58
Wartrace.....	55
Belle Buckle.....	51
Fosterville.....	45
Christiana.....	42
Rucker.....	38
Winsted.....	36
Murfreesboro.....	32
Russell.....	28
Florence.....	26
Wade.....	22
Smyrna.....	20
Lavergne.....	16
Kimbro.....	14
Mt. View.....	12
Antioch.....	10
Asylum.....	8
Curry.....	6
Glenciff.....	5
Nashville.....	0

## SHELBYVILLE BRANCH.

Wartrace.....Tenn.	55
Caldwell's.....	53
Shelbyville.....	53

## NORTHWESTERN DIVISION.

Nashville.....Tenn.	0
Stock Yards.....	1
New Shops.....	2
Hardings.....	7
Vaughn's Gap.....	9
Hicks.....	11
Bellevue.....	12
Newsom.....	16
Pegram.....	20
Kingston Springs.....	24
Craggie Hope.....	25
White Bluff.....	26
Burns.....	37
Colesburg.....	39

## NORTHWESTERN DIVISION— Continued.

Stations.	Miles from Nashville.
N. & T. Junction.....Tenn.	42
Dickson.....	44
Pond.....	50
Tennessee City.....	57
Briggs.....	60
Gorman.....	62
Hopkins Switch.....	66
Waverly.....	67
Franks.....	73
Box.....	75
Johnsonville.....	77
Eva.....	80
Camden.....	86
Lipe.....	90
Sawyer's Mill.....	92
H. R. Junction.....	94
Hollow Rock.....	96
Rosser.....	101
Huntingdon.....	106
Hico.....	112
McKenzie.....	117
Gleason.....	125
Dresden.....	132
Ralston.....	138
Martin.....	141
Gardner.....	144
Terrell.....	147
Paducah Junction.....	151
Union City.....	154
Woodland Mills.....	160
State Line.....Ky.	161
Hickman.....	168

## WEST NASHVILLE BRANCH.

West Nashville.....Tenn.	3
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## CENTREVILLE BRANCH.

Dickson.....Tenn.	42
Pomona.....	47
Tidwell.....	49
Iron Hill.....	50
Abiff.....	52
Bon Aqua.....	53
Lyle.....	59
Cantrell.....	61
Rodemer.....	62
Brown.....	64
Graham.....	67
Nunnely.....	69
Goodrich.....	70
Grinders.....	73
Centreville.....	76
Twomey.....	78
Deans.....	78
Buffalo.....	82
Etna.....	85
Kimmins.....	88
Hohenwald.....	95
Shubert.....	98
Nancy.....	102
Riverside.....	104
Allen's Creek.....	106
Lyle.....	59
Warner.....	80

## WESTERN & ATLANTIC DIVISION.

Stations.	Miles from Nashville.
Chattanooga.....Tenn.	151
Boyce.....	156
King's Bridge.....	157
Chickamauga.....	162
Graysville.....Ga.	168
Ringgold.....	174
Catoosa.....	176
Tunnel Hill.....	183
Rocky Face.....	185
Dalton.....	189
Tilton.....	198
Resaca.....	206
Calhoun.....	211
McDaniels.....	214
Adairsville.....	220
Halls.....	225
Cement.....	229
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Cass.....	238
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Cartersville.....	246
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Iceville.....	282
Bolton.....	282
Cleburne.....	282
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## ROME BRANCH.

Kingston.....Ga.	230
Wooleys.....	233
Murchisons.....	234
Eves.....	237
Bass Ferry.....	239
Dykes.....	241
Freemans.....	242
Orton.....	245
Rome.....	248

## MEMPHIS & PADUCAH DIVISION.

Paducah.....Ky.	182
N. N. & M. V. Crossing.....	181
Oaks.....	173
Overby.....	170
Elva.....	168
Millikens.....	165
Iola.....	164
Benton.....	160
Glade.....	156
Hardin.....	162

List continued on other side of Map.



# MAP, SHOWING MAIN LINE AND BRANCHES OF N. C.



(1) Mileage in Tennessee:	Main track	875.02 miles.	Side tracks	212.88 miles	
(2) Mileage in Alabama:	Main track	114.15 miles.	Side tracks	19.29 miles	
(3) Mileage in Georgia:	Main track	142.25 miles.	Side tracks	13.07 miles	
(4) Mileage in Kentucky:	Main track	57.33 miles.	Side tracks	10.38 miles	
Total miles main track		1188.75 miles.	Total miles sidings		255.62 miles

**Total miles main and side tracks in entire system.....1444.37**

- (5) There are about 48 railroad companies in the State of Tennessee. The total mileage of these companies in Tennessee amounts to 2998.22 miles. Of this mileage, that of the N. C. & St. L. Ry. more than doubles that of any other railroad in the State and amounts to nearly one-third of their combined mileage.





- Nashville & Chattanooga R. R.**—[Main Branch.] Chartered, 1846; extended from Nashville to Chattanooga, 151 miles. See p. 1, herein.
- Shelbyville Branch.**—Built by N. C. & St. L. Ry.; completed about 1852; extended from Wartrace to Shelbyville, 8.1 miles. See p. 206, herein.
- Jasper Branch.**—[Part of Sequatchie Valley Br.] Built by N. C. & St. L. Ry.; completed, October, 1867; extended from Bridgeport to Jasper, 12 miles. See p. 204, herein.
- Nashville & Northwestern R. R.**—[Northwestern Br.] Purchased, November 21, 1872; chartered, 1851-2; extended from Nashville to Hickman, Ky., 108 miles, after it purchased Hickman & Obion Ry. See p. 76, herein.
- Hickman & Obion R. R.**—[Extension of Northwestern Br.] Purchased, November 21, 1872, at same time Nashville & Northwestern was purchased, it being a part of it; extended from Union City to Hickman, Ky., 14 miles. See p. 104, herein.
- Pikeville Branch.**—[Part of Sequatchie Valley Branch.] Purchased, January 27, 1877; chartered, 1862-9; extended from Jasper to Pikeville, 45 miles. See p. 206, herein.
- Winchester & Alabama R. R.**—[Part of Fayetteville Br.] Purchased, July 28, 1877; chartered, 1849-50; extended from Decherd to Fayetteville, 40 miles, and subsequently from Elora to Tennessee State line, about 5 miles. See p. 152, herein.
- McMinnville & Manchester R. R.**—[Part of McMinnville Br.] Purchased, July 28, 1877; chartered, 1849-50; extended from Tullahoma to McMinnville, 35 miles. See p. 166, herein.
- Tennessee & Pacific R. R.**—[Lebanon Br.] Purchased, October 1, 1877; chartered, 1855-6; extended from Nashville to Lebanon, 29.21 miles. See p. 129, herein.
- Southwestern R. R.**—[Part of McMinnville Br.] Purchased, —; chartered, 1851-2; extended from McMinnville to Sparta, when completed by N. C. & St. L. Ry., 26 miles. See p. 192, herein.
- Inman Branch.**—[Part of Sequatchie Valley Br.] Purchased, January 1, 1883; built by Tenn. Coal, Iron & R. R. Co., under its charter; extended from Victoria to Inman, 5 miles. See p. 209, herein.
- Nashville & Tuscaloosa R. R.**—[Part of Centerville Br.] Purchased in sections, on March 13, 1883, and June 20, 1884; chartered, 1877; extended from Dickson through Centerville to Lewis county line, or Kimmins, 46 miles. See p. 227, herein; also, "Allen's Creek Extension," below.
- Tracy City Branch.**—[Sewanee Br.] Purchased, Jan. 1, 1887; built by Sewanee Mining Co., under its charter; extended from Cowan to Tracy City, 20 miles. See p. 277, herein.
- West Nashville Branch.**—Purchased, July 6, 1887; chartered, 1887; extended from Nashville to town of West Nashville, 3 miles. See p. 318, herein.
- Huntsville & Elora R. R.**—[Or Branch.] Purchased, October 28, 1887; chartered, 1886-7; extended from Huntsville, Ala., to Tennessee State line, 22 miles. See p. 214, herein.
- Duck River Valley Narrow Gauge R. R.**—[Columbia Br.] Purchased, November 23, 1887; chartered, 1872, extended from Columbia to Fayetteville, 48 miles. See p. 250, herein.
- Bon Air R. R.**—[Extension of McMinnville Br.] Purchased, December 3, 1887; chartered, 1887; extended from Sparta to Bon Air, 7.96 miles. See p. 199, herein.
- Western & Atlantic R. R.**—[Or Branch.] Leased, July 19, 1890; owned by State of Georgia; extended from Chattanooga, Tenn., to Atlanta, Ga., 138 miles. See p. 335, herein.
- Tennessee & Coosa R. R.**—[Gadsden Br.] Purchased, April 6, 1891; chartered, 1844-5; extended, when completed by N. C. & St. L. Ry., from Gadsden, Ala., to Huntsville, Ala., 73 miles. See p. 287, herein.
- Allen's Creek Extension.**—[Extension of Centerville Br.] Purchased, September 24, 1892; built by Southern Iron Co.; extended from Kimmins to Mannie, 18 miles. See p. 228, herein.
- Chattanooga Terminal R. R.**—Leased, July 29, 1895; chartered, 1892; extended from point on main line in Chattanooga, about 4,675 feet, to Chattanooga Iron Co. property. See p. 448, herein.
- Swan Creek Branch.**—[Offshoot from Centerville Branch.] Built by N. C. & St. L. Ry., 1896; extended from Centerville to Swan Creek, to meet with road of Duck River Phosphate Co. See p. 228, herein.
- Louisville & Nashville Terminal Property.**—[At Nashville.] Leased, June 15, 1896; chartered, 1893; extended partially through city of Nashville. See p. 557, herein.
- Tennessee Midland R. R.**—[Memphis Br.] Leased, September 9, 1896; chartered, 1896; extended from Memphis to Perryville, 125.6 miles. See p. 455, herein.
- \*\*Paducah & Tenn. R. R. of Ky.**—[Part of Paducah Br.] Leased, September 9, 1896; chartered, 1853-4; extended from Paducah, Ky., to Tennessee State line, 49 miles. See p. 487, herein.
- \*\*Paducah & Tenn. Ry. of Tenn.**—[Part of Paducah Br.] Leased, September 9, 1896; chartered, 1868; extended from Tennessee State line to within one mile of Paris, Tenn., 16 miles. See p. 487, herein.
- \*\*Paducah & Tenn. R. R. of Tenn.**—[Part of Paducah Br.] Leased, Sep. 9, 1896; chartered, 1868; extended from within one mile of Paris, Tenn., thence through Hollow Rock to Lexington, Tenn., 54 miles. See p. 487, herein.
- Rome R. R.**—[Rome Br.] Purchased, December 31, 1896; chartered, 1839; extended from Rome, Ga., to Kingston, Ga., 18 miles. See p. 381, herein.
- Middle Tenn. & Ala. R. R.**—[Extension of Shelbyville Br.] Purchased, October 13, 1897; chartered, 1887; extended from Fayetteville, Tenn., to Madison Cross Roads, Ala., 27.4 miles, with line graded to Shelbyville, Tenn., and Jeff. Ala. See pp. 408, 410, herein.

\*The Paducah & Tenn. R. R. of Ky., the Paducah & Tenn. Ry. of Tenn., and the Paducah & Tenn. R. R. of Tenn. had consolidated into the Paducah, Tenn. & Ala. R. R. Co., before they were leased to the N. C. & St. L. Ry. See p. 487, herein.

# LIST OF STATIONS—Continued.

## MEMPHIS & PADUCAH DIVISION—Continued.

Stations.	Miles from Nashville.
Dexter.....	Ky. 150
Alamo.....	" 147
Murray.....	" 142
Hazel.....	State Line 138
Puryear.....	Tenn. 129
Whitlock.....	" 123
Paris.....	" 117
VanDyke.....	" 110
Mansfield.....	" 106
Vale.....	" 100
H. R. Junction.....	" 95
Hollow Rock.....	" 90
Buena Vista.....	" 101
West Port.....	" 107
Yuma.....	" 111
Wildersville.....	" 116
Timberlake.....	" 121
Wards.....	" 127
Lexington.....	" 127
Hinson Springs.....	" 127
Foster.....	" 127
Huron.....	" 136
Luray.....	" 139
Beech Bluff.....	" 142
Ranger.....	" 144
Alexander.....	" 148
Rose Hill.....	" 151
Jackson.....	" 152
Grover.....	" 161
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Denmark.....	" 165
Mercer.....	" 169
Hatchie.....	" 172
Vildo.....	" 175
Augustus.....	" 177
Whiteville.....	" 181
Ina.....	" 186
Laconia.....	" 188
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Eads.....	" 213
Lenow.....	" 217
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Clay.....	" 222
Mullins.....	" 226
Berclair.....	" 228
Alta.....	" 231
Montgomery Park.....	" 233
K. C. Junction.....	" 235
Memphis.....	" 238

## PERRYVILLE BRANCH.

Lexington.....	Tenn. 127
Bluff.....	" 131
Chesterfield.....	" 135
Darden.....	" 138
Beacon.....	" 140
Parsons.....	" 144
Perryville.....	" 151

## SEQUATCHIE VALLEY DIVISION.

Bridgeport.....	Ala. 123
Copenhagen.....	Tenn. 126

## SEQUATCHIE VALLEY DIVISION—Continued.

Stations.	Miles from Nashville.
South Pittsburg.....	Tenn. 129
Kimball.....	" 131
Jasper.....	" 135
Sequatchie.....	" 138
Victoria.....	" 142
Whitwell.....	" 146
Shirleyton.....	" 149
Condra.....	" 152
Daus.....	" 156
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Mt. Airy.....	" 166
Pallo.....	" 168
College.....	" 172
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Victoria.....	" 142
Hutton.....	" 146
Inman.....	" 147

## TRACY CITY BRANCH.

Cowan.....	Tenn. 87
T. C. Junction.....	" 95
Sewanee.....	" 101
Monteagle.....	" 107
Tracy City.....	" 107

## SPARTA BRANCH.

Tullahoma.....	Tenn. 69
Hickerson.....	" 75
Belmont.....	" 81
Manchester.....	" 86
Wayside.....	" 89
Summitville.....	" 94
Morrison.....	" 99
Smarts.....	" 104
McMinville.....	" 110
Rowland.....	" 114
Campaigne.....	" 115
Rock Island.....	" 117
Walling.....	" 119
Holder.....	" 121
Ward.....	" 123
Doyle.....	" 127
Moore.....	" 130
Sparta.....	" 131
East Sparta.....	" 133
Price.....	" 135
Rock House.....	" 137
Bon Air.....	" 137

## LEBANON BRANCH.

Nashville.....	Tenn. 0
Lebanon Junction.....	" 2
Easton.....	" 4
Mill Creek.....	" 5
Mud Tavern.....	" 7
Donelson.....	" 8
Hermitage.....	" 11
Tulip Grove.....	" 13
Green Hill.....	" 16
Mt. Juliet.....	" 18
Silver Springs.....	" 22
Leeville.....	" 24
Tucker's Gap.....	" 26
Lillard.....	" 31
Lebanon.....	" 31

## COLUMBIA DIVISION.

Stations.	Miles from Nashville.
Decherd.....	Tenn. 82
Winchester.....	" 85
Kasserman.....	" 90
Belvidere.....	" 94
Maxwell.....	" 96
Bean's Creek.....	" 98
Huntland.....	" 103
Elora.....	" 106
Flintville.....	" 110
Brighton.....	" 114
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Fayetteville.....	" 129
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Fayetteville.....	Tenn. 122
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Wilson.....	" 129
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Patterson.....	" 138
Taft.....	" 141
Norwood.....	Ala. 144
Madison Cross Roads.....	" 149
Jeff.....	" 152

## HUNTSVILLE DIVISION.

Elora.....	Tenn. 103
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New Market.....	" 112
Deposit.....	" 116
Bell Factory.....	" 119
Mercury.....	" 123
Normal.....	" 125
Huntsville.....	" 130
Lily Flagg.....	" 136
Farley.....	" 140
Hobb's Island.....	" 144
Incline.....	" 145
Gunter's Landing.....	" 165
Guntersville.....	" 167
Wyeth City.....	" 169
Rayburn.....	" 173
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# PART I.

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## ORIGINAL CHARTER, AMENDMENTS AND ACTS

RELATING TO THE

## NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY

AND POSSESSIONS.

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### CHAPTER I.

ORIGINAL CHARTER OF THE NASHVILLE & CHATTANOOGA  
RAILROAD COMPANY—ACTS TENN., 1845-6, CHAP. 1.

**SECTION 1. Incorporation, name, general powers.**—*Be it enacted by the General Assembly of the State of Tennessee, That for the purpose of establishing a communication by railroad between Nashville and Chattanooga, the formation of a company is hereby authorized, which, when formed, shall be a body corporate, by the name and style of "The Nashville & Chattanooga Railroad Company,"* \* and by said corporate name shall be capable in law to buy, receive by gift, <sup>Name.</sup> hold, sell, and convey real and personal estate, as hereinafter provided, make contracts, sue and be sued, to make by-laws, and to do all lawful acts properly incident to a corporation, and necessary and proper to the transaction <sup>General + powers.</sup> of the business for which it is incorporated, and to have and use a common seal, and the same to alter and destroy at its pleasure, and shall have perpetual succession of members.

1. \* **Name, when and how changed.**—The corporate name was changed to the Nashville, Chattanooga & St. Louis Railway May 30, 1873, by a decree of the chancery court at Nashville, under the Acts of 1870-1, Ch. 54, p. 63 (see minute book "X," pp. 220-2), which decree is inserted in this compilation. See next chapter.

This was clearly within the power of the chancery court at that time under said acts. 1 Tenn. Chy. Rep., pp. 83, 95, 97; 3 Bax., 98. See, also,

12 Lea, 97, 103; 11 Lea, 3; 9 Lea, 380; 1 Lea, 462. The power, however, has since been withdrawn.

2. **By-laws.**—An amendment to the charter was subsequently passed allowing the directors, and not the stockholders, to make by-laws. Acts Tenn. 1847–8, Ch. 70.

3. **†General powers.**—The general powers of the corporation have been greatly enlarged by amendments to the charter and the passage of general laws. These powers are fully set out and discussed further on. By referring to the index a discussion of any particular power now possessed may be found.

4. **Incorporation.**—This railway has never been chartered in any state save Tennessee. It has purchased and now owns roads, however, that were chartered in other states. See index for road desired.

5. **Lease.**—This section was amended by Acts Tenn., 1857–8, Ch. 8, so as to authorize the company to lease the Winchester & Alabama Railroad and the branch to Fayetteville, or *any other railroad* connecting with said Nashville & Chattanooga Railroad, for such time and upon such terms and conditions as may be agreed upon between the president and directors of the said Nashville & Chattanooga Railroad Company and the president and directors of the railroad company contracted with. See index for right to *lease*.

5. **Chancery Court amendment.**—This section was also amended by decree of chancery court at Nashville, May 13, 1872, per minute book "V," p. 174, so as to allow the company to purchase or lease other roads, and issue bonds therefor; to subscribe for stock in other corporations and issue bonds therefor; and to indorse and guarantee bonds of other companies, etc. See decree itself herein; refer to index. See also discussion of *validity* of chancery court amendments herein; refer to index.

**SEC. 2. Capital, value of shares, books opened, commissioners.**—Books for subscription of sixty thousand shares of the capital stock of said company, of twenty-five dollars each,\* shall be opened on the first Monday in January, 1846, and shall be kept open for six days, between the hours of 10 o'clock in the morning and 4 o'clock in the evening of each of those days, at the following places and by the following commissioners, to wit:

Books opened,  
where.

At Nashville, by James Overton, John M. Hill, George W. Martin, Thomas Washington, John Shelby, Godfrey M. Fogg, John W. Walker, Jacob McGavock, J. Hugh Smith, W. W. Woodfolk, A. W. Vanleer, Samuel Watkins, Thomas Wells, John Thompson, Joseph B. Knowles, James Erwin, Felix R. Rains, Pleasant Smith, J. J. Gill, John Nichol, West H. Humphreys, R. J. Meigs, A. V. S. Lindsley, Alexander Allison, and Robert I. Moore.

Commis-  
sioners.

At Gallatin, by James A. Blakmore, Elijah Boddie, Henry B. Vaughn, Daniel S. Donelson, S. R. Anderson, and William M. Blakemore.

At Shelbyville, by Robert Matthews, George Davidson, Thomas Dean, John Eakin, and W. C. Swanson.

At Gainsborough, by Thomas L. Bransford, Watson M. Cooke, Samuel E. Hare, and Richard P. Brooks.

At Lebanon, by Paulding Anderson, R. L. Caruthers, and Calvin Jackson.

At McMinnville, by George R. Smartt, William Black, Jesse Locke, Philip Hoodenpyl, and L. D. Mercer.

At Franklin, by Thomas Parks, William Park, Nicholas Perkins, Samuel Crockett, and Robert C. Foster.

At Murfreesboro, by Charles Ready, Edwin A. Keeble, Harman Spence, Lewis Garner, and L. H. Carney.

At Sparta, by James Snodgrass, John Warren, and William M. Young.

At Fayetteville, by John Clark, Jr., John M. Bright, Robert Farguharson, William T. Ross, James Fulton, and William Bonner.

At Pulaski, by Andrew M. Ballentine, Thomas Martin, and Benjamin Carter.

At Winchester, by Benjamin Dechard, Mark Hutchins, James Harris, James Sharp, Thomas Wilson, and C. C. Garner.

At Chattanooga, by Robert M. Hook, Benjamin Chandler, and John P. Long.

At Jasper, by Jackson Pryor, Daniel R. Rawlings, and John Harriford.

At Lewisburg, by Benj. Williams, Ephraim Hunter, James V. Ewing, Morgan Fitzpatrick, and Henry Harding.

1. **\*Value of shares changed.**—The value of a share of stock was originally \$25. By Acts 1889, ch. 102, all corporations "hereafter created or hereafter to be created" under the laws of the State of Tennessee, were allowed to make a share of stock \$100 or less, and issue certificate therefor. Secondly, that any such corporation which has heretofore issued shares of stock for \$25, may call in the same and combine four such shares and issue a certificate for \$100 in lieu thereof.

Under this act the Nashville, Chattanooga & St. Louis Railway issued new certificates for \$100 each, as provided above, in place of the original, as per resolution adopted May 30, 1889.

The above clause, "hereafter created or hereafter to be created," evidently was intended for "heretofore created or hereafter to be created." The act has been compared with the enrolled copy in the secretary of state's office, and found to contain the same mistake.



2. **Capital increased, how.**—See § 17 of this charter; see, also, *index*. The capital stock was increased to \$10,000,000 at the annual meeting of stockholders, June 30, 1891.

**SEC. 3. Subscriptions to stock, payment.**—The said commissioners, or a majority of them, at each of the places aforesaid, shall receive subscription for stock in the said railroad company during the time the said books are directed to be kept open, and on each share so subscribed shall demand and receive the sum of fifty cents, without which the subscription shall be void.

The original capital stock of the Nashville & Chattanooga Railroad Company was subscribed as follows:

By the city of Nashville.....	\$ 500,000 00
By the city of Charleston, S. C.....	500,000 00
By the Georgia Railroad.....	250,000 00
By the town of Murfreesboro.....	30,000 00
By individuals.....	806,912 50
Total.....	\$2,086,912 50

**SEC. 4. Deposit of money, commissioners, incorporation perfected, when.**—As soon as the time for receiving subscriptions as aforesaid shall have expired, the said commissioners shall, respectively, deposit all the money so received by them in some incorporated bank, redeeming its notes in specie, to the credit of the Nashville & Chattanooga Railroad Company, and subject to the order of the president of the board of commissioners hereinafter appointed, and shall also forward a correct list of all the subscribers to the said stock, with the number of shares each subscriber has taken, to a board of commissioners, to be composed of the following persons: Jno. M. Bass, Jno.

Commission-  
ers.

M. Hill, Francis B. Fogg, Andrew Ewing, A. O. P. Nicholson, V. K. Stevenson, Jno. Bell, Willoughby Williams, William Nichol, S. D. Morgan, Jos. T. Elliston, Jos. W. Horton, Jas. A. Porter, Jas. Overton, and Jno. Shelby, who may establish rules to govern their proceedings, choose their own president, and appoint such other officers and agents as they may think proper, and prescribe their duties, and who, or a majority of whom, shall meet at Nashville on the third Monday in January next, ascertain the whole number of shares taken in the said company, and publish

To meet at  
Nashville.

the same in some newspaper printed in Nashville, on or before the fourth Monday in January next; and, if the number of four thousand shares shall have been subscribed, on each of which there shall have been paid the sum of fifty cents, the Nashville & Chattanooga Railroad Company shall be regarded as formed, and thenceforth and from the day of the closing of the books of subscription, as aforesaid, the said subscribers to the stock shall form a body politic and corporate indeed and in law, by the name and for the purpose aforesaid, and in all things to be represented by the board of commissioners aforesaid, until the election of a board of directors, as hereinafter prescribed.

**Incorporation perfect-  
ed when.**

**First board.**—The first board of directors were elected January 24, 1848. Previous to that time the corporation had been managed by the board of commissioners.

**SEC. 5. Books kept open when, incorporation, commissioners.**—If on closing the books aforesaid the number of four thousand shares shall not have been subscribed, then and in that case the said board of commissioners, by themselves or their agents, may receive subscriptions till the number of four thousand shares be taken, and whenever that number of shares shall be subscribed, the company shall be considered as formed, as having a corporate existence, as aforesaid, and of

**Incorporation.**

which notice shall be given, as hereinbefore directed, and may proceed to survey the route for the road, and make an estimate of the cost of its construction. Nevertheless, no

conclusive and binding location of the road shall be made by the board of commissioners, but the same

**Power of  
commis-  
sioners.**

be left to the determination of the first board of directors chosen by the stockholders. And the said board of commissioners may, by themselves or their agents, at such time and places as they may think proper, and upon such terms as to time and manner of payment as they may deem expedient, receive additional subscriptions until the number of forty thousand shares shall have been subscribed, upon which the company may be formed, and the subscribers shall thenceforth form a body corporate, as aforesaid; *Provided*, The same shall be done on or before the first day of January, 1848; and for the residue of

the original number of sixty thousand shares the said corporation, when organized, may in like manner receive additional subscriptions.

**SEC. 6. Reduction of shares.**—In case more than sixty thousand shares shall have been subscribed on closing the books when they are first opened, the shares shall be reduced to that number by deducting the surplus shares from the highest subscribers, placing them on an equality of numbers, as far as can be done; and, after such reduction, the holders of the remaining shares shall form the company, and be interested therein in proportion to the number of shares which they may then respectively hold.

**SEC. 7. Money returned if shares not subscribed.**—If, on closing the books on the first day of January, 1848, the number of forty thousand shares shall not have been subscribed, the money paid by each subscriber shall be returned to him by the said board of commissioners, after defraying the expenses of opening the books and making a survey and map of the route, and estimate of the cost of the road, which the said commissioners are hereby authorized to have made as soon as practicable.

**SEC. 8. President and directors, how chosen.**—The affairs of said company shall be managed by a board of directors, to consist of fifteen, who shall be chosen by the stockholders from their own body, and a president of the company shall be elected by the directors from among their own members, in such manner as the regulations of the corporation shall prescribe.

1. **Section amended.**—This charter was amended by Acts Tenn., 1849-50, ch. CCLXVI., so as to allow the city of Charleston, S. C., to appoint two of her citizens to represent her stock in this company as *directors*. The same act also amended the charter so as to allow the Georgia Railroad & Banking Co. to appoint one director to represent its stock.

2. **Number of directors.**—By Acts Tenn., 1868-9, ch. 23, all railroads, by majority vote, were allowed to reduce their directors to a number not less than six, and such vote became amendment to charter. Again, by Acts 1859-60, ch. 202, authority was given to reduce the number to nine, where State aid granted and company agreed. Again, by Acts Tenn., 1881, ch. 119 (Code, M. & V., § 1702), all private corporations were allowed to increase or diminish the number of directors to any number not less than five, upon a vote of the stockholders representing three-fourths of the capital stock.

None of these acts have been accepted, however, and the number of directors still remains fifteen.

3. **First board of directors.**—The first board of directors were elected



January 24, 1848. Previous to that time the affairs of the company were managed by the commissioners.

4. **General powers.**—A general power granted directors to manage the affairs of the incorporation includes the power to borrow money, make, accept, or assign negotiable paper, etc., in the course of business of the corporation. Thompson on Corp., secs. 3988-9; 9 Heis., 524, 533; 11 Hum., 22; 7 Heis., 288; 2 Cold., 655; 9 Hum., 264; 6 Hum., 516.

5. For method of electing president and directors, together with their powers, qualifications for office, etc., see *Index*. See also secs. 18, 19 of charter.

**SEC. 9. Stockholders' first meeting; directors' election, by-laws—how enacted.**—As soon as the number of forty thousand shares shall have been subscribed, it shall be the duty of the commissioners appointed to declare the same, to appoint a time for the stockholders to meet in Nashville, and give notice thereof by publication in some of the newspapers of Nashville, at which time and place the said stockholders, in person or by proxy, shall proceed to elect the directors of the company, and to enact all such regulations, rules, and by-laws as may be necessary for the government of the corporation and the transaction of its business. The persons elected directors at this meeting shall serve for such period, not exceeding one year, as the stockholders may direct; and at this meeting the stockholders shall fix on the day and place or places where the subsequent election of directors shall be held; and such elections shall thenceforth be annually made. But if the day of annual election should pass without any election of directors, the corporation shall not thereby be dissolved, but it shall be lawful on any other day to hold and make such elections in such manner as may be prescribed by a by-law of the corporation.

Meeting at Nashville.

Directors, how elected and powers.

By-laws, how enacted.

Corporation not dissolved by failure of annual election.

1. **Section amended, by-laws, elections.**—This section was amended by Acts 1847-48, ch. 70, and accepted by company, so as to confer upon the directors, instead of the stockholders, the power to make "rules, regulations, and by-laws," and to empower directors to appoint three judges and two clerks, from year to year, for purpose of holding election of directors.

2. **By-laws.**—Though by-laws provide for stated meetings, directors may hold special or informal meetings, and their actions, when recorded, are legal and binding. 9 Heis., 545.

3. **Meetings.**—Directors may hold meeting out of state, and legal. Rorer on R. R., p. 211; Thomp. on Corp., § 3933; 45 Ga., 34; 34 N. Y., 208.

4. **Section amended.**—By Acts of 1857-58, ch. 8, this charter was



amended so that the stockholders could, at any meeting, fix on the day and place where subsequent meetings of stockholders and election of directors shall be held.

5. **By-laws.**—The by-laws, orders, and resolutions adopted by a railroad company or its stockholders are always under the control of the majority, unless expressly provided otherwise by the charter, and may be repealed, altered, or modified from time to time by the majority. 5 Sneed, 566–568.

6. See Acts 1868–69, ch. 27 (§ 1238 M. & V. Code), for *general law* in reference to election of directors, when proper officers refuse or neglect to call meeting for same, inserted herein. See *index*.

7. For qualifications, elections, liability, etc., of directors, and passage of by-laws, see *index*.

**SEC. 10. Vacancy in board, how filled.**—The board of directors may fill up all vacancies which may occur in it during the period for which their board shall have been elected, and, in the absence of the president may fill his place by electing a president *pro tempore*.

**SEC. 11. Contracts and agreements binding without seal.**—All contracts and agreements authenticated by the president of the board shall be binding on the company without seal, or such other mode of authentication may be used as the company, by their by-laws, may adopt.

*Deeds* to real estate, however, were required at common law to be under seal, and neither the above section, nor § 2478 of the *Code* (M. & V.), change this law as to such conveyances. In all such cases the *seal* must be attached to make it legal. 10 Pick. (Tenn.), 460.

For discussion of what contracts can be made by company, how corporate name to be signed, acknowledgments, etc., see *index*.

**SEC. 12. Liability of directors.**—The board of directors shall not exceed, in their contracts, the amount of the capital of the corporation, and of the funds which the company may have borrowed and placed at the disposal of the board; and in case they should do so, the president and directors who may be present at the meeting at which such contract or contracts so exceeding the amount aforesaid shall be made, shall be jointly and severally liable for the excess, both to the contractor or contractors and the corporation: *Provided*, That anyone may discharge himself from such liability by voting against such contract or contracts, and causing such vote to be recorded on the minutes of the board, and giving notice thereof to the next general meeting of the stockholders.

**Liability of directors.**—The directors are individually liable for such specific debts only as were contracted with their assent in excess of the

paid-up capital and remain unpaid after the corporate assets are exhausted. 3 Pick., 60; see, also, 6 Bax., 278; 11 Pick., 635.

Directors are not mere figureheads; they must use good faith, care, attention, and circumspection, or they will be liable.

The diversion of funds to other objects than those mentioned; the payment of dividends which leave insufficient funds to meet liabilities; the keeping of false books; the making and publishing of false reports, are misdemeanors; and also subjects those actively concerned in the same to damages. M. & V. Code, §§ 1716-17.

For discussion of liability of directors, see *index*.

**SEC. 13. Lateral roads within twenty miles of this prohibited.**—After the route of such railroad shall have been accurately surveyed and adopted, and a plat thereof deposited in the office of the secretary of state, it shall not be lawful for any other railroad to be built, cut, or constructed, in any way or manner, or by any authority whatever, running laterally within twenty miles of the route so adopted, unless by said company, or with the consent of the board of directors thereof for the time being.

This section has never been construed by the supreme court of Tennessee, but the supreme courts of other states, as well as the *United States*, have decided similar sections in other charters valid. They hold that such a grant, when accepted by the corporation, is in the nature of a contract which cannot be impaired without compensation to the railroad company. 17 Conn., 40; 42 Am. Dec., 716; 1 Wall. (U. S.), 116; 3 Wall. (U. S.), 51; 73 Iowa, 513; 25 Wend. (N. Y.), 628; 47 Me., 189, 208; 115 U. S., 650, 683; 7 N. H., 35; 55 Conn., 1; 120 U. S., 64; 14 Fed. Rep., 194; 22 Cal., 398; 5 How. (Miss.), 503; 11 La. Ann., 253; 13 How., 71. For discussion of this, see *Charter*, subhead "What Franchises Protected as Contracts." Refer to *index*. 96 Ga., 562; 86 Ga., 83; 70 Ga., 594.

**SEC. 14. Exclusive transportation, rate of charges.**—The said company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, and produce over the said railroad by them to be constructed; *Provided*, That the charge of transportation or conveyance shall not exceed thirty-five cents per one hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement, for every hundred miles, and five cents a mile for every passenger; *And provided also*, That the said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned.

Rate of  
charge.

1. **Rate of charge.**—This section simply gives the right to charge for freight and passengers. The intent was not to proportion the charges by any unit of distance, but to fix a maximum beyond which the company could not go, and to leave the tariff of charges, within that limit,

to the company, subject to the rule of the common law that charges should be reasonable, and to the regulating power of the courts and of the legislature. 9 Lee, 609. See, also, 134 U. S., 418. 70 Ga., 694.

2. This section would only be operative to and from points wholly within the State of Tennessee. Shipments to and from points without the state would be controlled by the interstate commerce law. 116 U. S., 307 [29: 636].

3. In shipments from Nashville to Chattanooga, the mere fact that the road runs into Georgia and Alabama would not take it out of this section, for, "in the carriage of freight between two points in one state, the mere passage over the soil of another does not render that business foreign which is otherwise domestic." 145 U. S., p. 192 (672). See notes to secs. 34 and 40. See, also, 108 U. S., 538 (27: 812-818).

4. **Exclusive transportation.**—A part of this section seems at first blush to convey a franchise exempt from eminent domain, as it purports to convey the *exclusive* right of transportation over the road. Whether the legislature intended to do so or not, however, is immaterial, as the grant of such a right would be unconstitutional. The state cannot bargain away its *sovereign* power, and any act attempting to divest it of the power would be void, even though incorporated in the charter of the road. Vol. XIV. Am. & Eng. Corp. Cas., pp. 417, 30; 18 Conn., 451; 102 Pa. St., 123; 48 Mich., 433; 53 Ala., 211; 65 Ga., 160; 7 N. H., 35; Lewis on Em. Dom., sec. 275. See 50 Ga., 204; 70 Ga., 694.

**SEC. 15. Installments, suits for.**—The board of directors may call for the payment of twenty-four and a half dollars on each share of stock, in sums not exceeding two dollars, in every thirty days; *Provided*, That twenty days' notice be given of such call in at least one public newspaper of the state in which any of the stockholders may reside; and a failure to pay, or secure to be paid, according to the rules of the company, any of the installments so called as aforesaid, shall induce a forfeiture of the share or shares on which default shall be so made, and all payments thereon, and the same shall vest in and belong to the company, and may be restored to the owner or owners by the board of directors, if they deem proper, on the payment of all arrears on such shares, and legal  
**Suits for.** interest thereon, or the directors may waive the forfeiture after thirty days' default, and sue the stockholders for the installment due, at their discretion.

A corporation has no power to make a by-law to forfeit or sell a member's stock, unless there be a provision (as in this instance) in the charter or articles of association, authorizing the same. 19 Wend., 37; Rorer on Railroads, p. 163. Such a law would not now be valid, as all *subscriptions* have been settled.

**SEC. 16. Stock, how transferred.**—The stock of said company may be transferred in such manner and form as may be directed by the by-laws of the said corporation.



The by-laws, orders, and resolutions adopted by a railroad company, or its stockholders, are always under the control of the majority, unless expressly provided otherwise by the charter, and may be repealed, altered, or modified from time to time by the majority. 5 Sneed, 566-8.

For discussion of how stock to be transferred and liability of company for, see *index*.

**SEC. 17. Capital increased, how.**—The said company may at any time increase its capital to a sum sufficient to complete the said road and stock it with everything necessary to give it full operation and effect, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the company, and on the mortgage of its charter and works; and the manner in which the same shall be done in either case shall be prescribed by the stockholders at a general meeting; and any state, or any citizen, corporation, or company, of this or any other state or country, may subscribe for and hold stock in said company, with all the rights and subject to all the liabilities of any other stockholder.

1. **Increase of capital.**—The clause in this section allowing the company to "increase its capital to a sum sufficient to complete its road, and to stock it with everything necessary to give it full operation," etc., gives only the limited power to the company to issue bonds and mortgage its property to *complete and equip* its road, and for no other purpose. *Frazier v. Railroad Company*, 4 Pickle, 138.

2. By the Acts of 1875, ch. 142, sec. 19, all corporations previously chartered by the acts of the general assembly were allowed to increase their capital stock by a method therein set out.

3. This section was amended May 13, 1872, by a decree of the chancery court at Nashville, minute book V, p. 174, sec. 4, so that "two-thirds of the whole number of directors agreeing thereto, may increase the capital stock to such an amount as may be determined by the board of directors." See decree itself in this compilation, in next chapter. But also see discussion herein of validity of chancery court amendments.

4. For method of increasing capital stock now, see *index*.

5. **Increase of capital.**—By Acts Tenn., 1857-8, ch. 161, sec. 4, this company was allowed to increase its capital to a sum sufficient, with the state aid, to construct the Jasper branch.

6. The capital stock of this company was increased to \$10,000,000 at the annual meeting of stockholders June 30, 1891.

**SEC. 18. Directors' annual report, may call general meetings.**—The board of directors shall, once in every year at least, make a full report on the state of the company and its affairs to a general meeting of the stockholders, and oftener if directed by a by-law; and shall have power to call a general meeting of the stockholders when the board may deem it expedient.

See notes to sec. 9 of this charter.



**SEC. 19. Qualification of officers and voters.**—No person but a citizen of the United States, being a *bona fide* stockholder in his own right of at least forty shares, which he shall have held at least three months previous to his election (except at the first election), shall be president or a director of the company; nor shall any stockholder vote, in person or by proxy, at any general or other election (except the first), who shall not have held, in his own right, the shares on which he offers to vote at least three months previous to such election.

1. By Acts 1849–50. ch. 266, this section was amended so as to allow the city of Charleston, S. C., to appoint two directors in road to represent her stock, and the Georgia Railroad & Banking Co. to appoint one, but that eight directors should still constitute a quorum. See act itself in next chapter.

2. The city of Charleston subscribed for \$500,000 of the stock in this company, as per city ordinance passed April 11, 1848.

3. The Georgia Railroad & Banking Co. subscribed for \$250,000, as per resolution of directors passed April 11, 1848.

For discussion of qualification of president and directors and right of stockholders to vote for, see *index*.

**SEC. 20. Method and scale of voting for directors.**—Stockholders may vote in person or by proxy and in the election of directors, and, in voting on all questions which come before a meeting of the stockholders, or which may be submitted to the decision of the stockholders in any other manner, the vote shall

be taken according to the following scale: The owner of one or two shares shall be entitled to one vote; the owner of not less than three nor more than four shares shall be entitled to two votes; the owner of not less than five nor more than six shares shall be entitled to three votes; the owner of not less than seven nor more than eight shares, to four votes; the owner of not less than nine nor more than eleven shares, to five votes; the owner of not less than twelve nor more than fifteen shares, to six votes; the owner of not less than sixteen nor more than twenty shares, to seven votes; the owner of not less than twenty-one nor more than twenty-six shares, to eight votes; the owner of not less than twenty-seven shares nor more than thirty-three, to nine votes; the owner of not less than thirty-four nor more than forty shares, to ten votes; and the owner of every ten shares above forty

Scale of  
voting.

shall be entitled therefor to one vote; *Provided*, That no individual, corporation, or company shall be entitled to more than five hundred votes.

1. **Amendment as to scale of voting.**—By Private Acts 1868-9. ch. 2, sec. 4, the charters of all railroads were allowed to be amended so that every stockholder should be entitled to one vote for each share of stock, provided it did not interfere with the vested right of the company. This amendment was accepted by the Nashville, Chattanooga & St. Louis Railway, September 20, 1875, and now in all elections each share is entitled to one vote. See discussion herein; refer to index.

2. **Amendment [chancery court].**—This section was amended by decree of the chancery court, at Nashville, May 13, 1872, as per minute book "V," p. 174 *et seq.*, so that "the owner of one or more shares, up to and including four, should be entitled to one vote for each share: the owner of a greater number of shares than four should be entitled to one vote for each four shares over and above four." This amendment was doubtless void, however. 8 Bax., 332; 1 Tenn. Chy., 95, 98; 11 Lea, 3; 9 Lea, 380; 1 Lea, 462. Subsequently, on September 20, 1875, the company accepted the Acts of 1868-9, ch. 2, as above set out, which now gives one vote for each share.

**SEC. 21. Real property may be purchased for what.**—The said company may purchase, have, and hold in fee, or for a term of years, any lands, tenements, hereditaments which may be necessary for said road, or appurtenances thereof, or for the erection of depositories, storehouses, houses for the officers, servants, or agents of the company, or for workshops or foundries to be used for the said company, or for procuring timber, stones, or other materials necessary for the construction of the road or its appurtenances, or for effecting transportation thereon.

1. See notes to sec. 24 of this charter.

2. For the purposes enumerated in the above section, the railway cannot condemn, but must rely upon its *purchasing* power therein conferred. 11 Hum., 347.

For general discussion of this under *Eminent Domain*, herein, see *index*.

**SEC. 22. Crossing and taking roads, water courses, and turnpikes.**—The said company shall have the right, when necessary, to construct the road, or any branch thereof, across or along any public road or water course; *Provided*, That the said road and the navigation of such water course shall not be thereby obstructed; *And provided further*, That such railroad shall not be located so near any turnpike road as to injure or prejudice the interests of the stockholders in such turnpike road, except upon such

Public roads  
and water  
courses.

Turnpikes  
not to be  
injured.

terms as may be agreed upon by the president and directors of the same on behalf of the stockholders.

1. **Bridge across Tennessee river.**—By Acts Tenn., 1849-50, ch. 266, sec. 2, the company was required to build the bridge across the Tennessee river, at least thirty feet above extreme high-water mark between the two piers next to the western bank or any two piers the company may deem best, and the distance between the two so selected shall be at least one hundred and fifty feet. Subsequently, by Acts Tenn., 1855-6, p. 487, as the bridge had burned, the legislature passed an act relieving the company from building the bridge thirty feet above high-water mark, or any other specified height, provided a good draw or revolving bridge be constructed, at least sixty feet between the piers. See act itself in this compilation, in next chapter.

**Alabama acts as to bridge.**—The state of Alabama passed, by Acts 1849-50, No. 123, sec. 2, an identical act to the Acts of 1849-50, ch. 266, sec. 2, of Tennessee, above set out, and subsequently, by Acts 1855-6, p. 11, passed an identical act to the Acts of 1855-6, p. 487, of Tennessee, above set out.

By Acts of 1888-9, p. 443, Alabama again required the bridge to be built thirty feet above high water, etc., this act being the same as Acts of 1849-50, No. 123, above set out. This act, however, is void as against the vested rights of the railway. The bridge had been erected and the draw put in under the Acts of 1855-6, before the act of 1888-9 was passed. In addition it would be void, as congress now has charge of the matter.

**Congress acts.**—By acts of congress 1888, as amended by those of 1890, the character of bridges, etc., over all navigable streams has been taken from the state legislatures. Prior to this time, congress had no jurisdiction over the navigable waters within the territorial limits of a state, as there was no *common law* of the United States independent of statute. Until congress acted, therefore, the matter rested entirely with the legislatures of the states. Hence these acts. Since congress has taken charge, however, these acts of the state legislature are of no particular value. The bridge must be constructed according to the acts of congress. As it is now constructed lawfully under the said acts of congress, the last acts of Alabama are void upon the subject.

2. **Road crossings.**—Where railroad crosses public road already in use, it must, unless relieved by statute, not only restore the public road, but erect and maintain perpetually all structures and keep up all repairs made necessary by such crossing, for the safety and convenience of the public. 3 Pickle, 712. But this law does not apply where road crosses *railroad*. See discussion herein. See, also, 14 Lea, 525, which holds this section valid in action by turnpike company to enforce contract.

3. **Obstructing.**—The temporary and necessary obstruction of navigation in the construction or repair of a bridge is not unlawful under this section, nor within the prohibition of § 1527 of the code (M. & V.). 6 Pickle, 638. But see 5 Sneed, 427; 1 Bax., 55.

4. The term "public road," in this charter, does not embrace the streets and alleys of a city. 3 Head, 596.

5. Railroads may be indicted and fined for obstructing a public highway contrary to powers in their charter. 3 Head, 523.

6. See discussion herein of right to cross bridge and obstruct roads, navigable streams, etc., and right of highways and railways to cross right of way of this company. Refer to index.

**SEC. 23. Purchase of bridges, roads, etc.**—The said com-



pany may purchase, have, and hold any bridge or turnpike road over which it may be necessary to carry the said railroad; and when such purchase is made, to hold the said bridge or turnpike road on the same terms and with all the rights which belong to the individual, individuals, or corporation from which such purchase may be made; *Provided*, That the said company shall not obstruct any public road without constructing another as convenient as may be.

1. The term "as convenient as may be" in the above section does not mean that the new road must be as convenient and easy of passage and as safe as the old road, but that the new road should be so constructed as to answer the purposes of the traveling public, and be made as easy and convenient as the nature of the ground will permit, having regard to the rights of the public and not requiring unreasonable outlays of money by company. 1 Bax., 55.

2. A chartered toll bridge, having exclusive right, may be condemned for railroad purposes. 1 Sneed, 176.

**SEC. 24. Condemnation for right of way.**—Where any lands or right of way may be required by the said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated; and the said commissioners, before they act, shall severally take an oath, before some justice of the peace, faithfully and impartially to discharge the duty assigned them. In making the said valuation, the commissioners shall take into consideration the loss or damage which may occur to the owner or owners in consequence of the land being taken or the right of way surrendered, and also the benefit and advantage he, she, or they may receive from the erection or establishment of the railroad or works, and shall state particularly the nature and amount of each, and the excess of loss and damage over and above the benefit and advantage shall form the measure of valuation of the said land or right of way. The proceedings of the said commissioners, accompanied with a full description of the said land or right of way, shall be returned under the hands and

Damages for land taken, etc., how ascertained.

By sworn commissioners.

Commissioners to consider what.



seals of a majority of the commissioners, to the court from which the commission issued, there to remain of record. In

case either party to the proceedings shall appeal from

**Appeal.**

the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged therewith in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted; and the lands or right of way so valued by the commissioners or jury shall vest in the said company in fee simple so soon as the valuation may be paid, or, when refused, may be tendered. Where there may be an appeal, as aforesaid, from

**On what conditions the work to proceed pending litigation.**

the valuation of commissioners by either of the parties, the same shall not prevent the works intended to be constructed from proceeding; but where the appeal is by the company requiring the surrender, they shall be at liberty to proceed in their works only on condition of giving to the opposite party a bond, with good security, to be approved by the clerk of the court where the valuation is returned, in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest in case the same be sustained; and, in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court; *Provided*, That when the land cannot be had by gift or purchase the operations of the work are not

**Work not to be delayed by legal process.**

to be hindered or delayed during the pendency of any proceedings to assess its value, as aforesaid, nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

1. **Character of title acquired.**—It will be noticed, from the above section, that, as soon as the commissioners appointed to assess the value made their return, and the railway paid or *tendered* the amount assessed, the title to the land or right of way immediately vested in the company in *fee simple*. The supreme court of Tennessee, in construing this section, held: "That the railway company, having constructed its road and paid the damages aforesaid, acquired an absolute estate in *fee simple* to said land, and is entitled to the exclusive *possession and control of every part thereof*. The original owner, therefore, has no right to the occupation or use of any part thereof within the limits so condemned and *paid for*." 4 Sneed, 528 [280].

The title and right to the use of the land and right of way, acquired under section 25 below, however, is materially different. In that case, the land is not *paid* for, and, though the company is given one hundred feet on each side of the center of the road, in the absence of any contract to the contrary, where the owner failed to apply in time for assessment, yet, the title secured is only an *easement* and not a *fee simple*, and the landowner is entitled to the use of it until necessary for railroad purposes, though he must then give it up. 5 Pick., 293.

2. **For what land may be taken.**—Land may be taken, under this section, for right of way, for approaches to the road for persons and vehicles, for places for receiving and delivering, loading and unloading, goods, merchandise, etc., but *not* for land for the purposes of depositories, storehouses, workshops, and houses for agents, etc. In the latter cases the company must rely solely upon its *purchasing* power, which, under section 21 of this charter, it has the right to do. 11 Hum., 347.

3. **Same, may make successive appropriations.**—The mere fact that the company condemned originally, under this section, fifty or one hundred feet for a right of way, will not prevent it now from condemning as *much more as may be necessary* from time to time. This is so, even though the railway in some cases may have agreed and contracted not to do so, and the right of way was *given* to it under that condition. The board of directors have no *power* to bargain away the power of *eminent domain*. 87 Ky., 72; 45 Mo., 212; Rorer on Railroads, p. 372, 275; 16 Ohio St., 390; 54 Penn. St., 103; 10 Vroom, 45; 67 Barb., 426; 52 Ind., 16; Randolph on Em. Dom., p. 107. § 116; 36 Conn., 196; 87 Ala., 501; 85 Ala., 106; 101 Ind., 366; 1 Md., 553; Lewis on Em. Dom., §§ 247, 259; 52 Ind., 16, 42; 101 Ind., 366; 113 Ill., 156; 26 Kan., 669; 13 Neb., 361; 54 Pa. St., 103; 57 Ark., 359; 58 Pa. St., 249; Elliott on Railroads, §§ 930, 962; 104 Ill., 323; 8 Nev., 100; 58 Md., 539; 17 Ill., 123; 9 Ky. L. R., 924; 44 Hun (N. Y.), 194; 5 Col., 270; 6 Col., 2; 71 Ill., 592; 18 Pick. (Mass.), 472; 5 Ore., 117.

4. **How condemnation made now.**—The power of *eminent domain* conferred in the above section is an inviolable right that cannot be withdrawn by the legislature, nor surrounded with such conditions as will destroy its value. 14 Wend. (N. Y.), 51; s. c., 18 Wend. (N. Y.), 9; 31 Am. Dec., 313. But where a statute prescribes a *mode* by which lands may be condemned in the charter, and thereafter the legislature, by *general law*, prescribes a different *mode*, the company must proceed in the mode prescribed by the latter act. Such a statute does not impair *vested rights*, but merely affects remedies. Thompson on Corp., secs. 5407, 5437; 16 Am. Rep., 729; 47 N. J. L., 59; 54 Am. Rep., 114; 81 Ky., 221; 3 S. C., 381; 12 Heis. (Tenn.), 54. Subsequent legislation has provided general laws for condemnation of land, and these should doubtless be followed. See *Eminent Domain* herein. Refer to *index*. 2 Swan, 422.

5. For a full discussion of this section, together with the right of successive appropriations, occupation, and use of right of way, building on and tunneling same, etc., see *Eminent Domain, Right of Way*, herein. Refer to *index*.

SEC. 25. **In absence of contract, right of way one hundred feet, when.**—In the absence of any contract with the said company in relation to land through which the said road may pass, signed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be con-

In absence of contract owners of land to apply for such assessment in five years, or barred.

structed, together with a space of one hundred feet on each side of the center of said road, has been granted to the company by the owner thereof, and the company shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used only for the purposes of the road, and no longer, unless the person or persons owning the said land at the time that part of the road which may be on said land was finished, or those claiming under him, her, or them, shall apply for an assessment for the value of said lands, as hereinbefore directed, within five years next after that part of said road was finished, and in case the said owner or owners, or those claiming under him, her, or them, shall not apply for such assessment within five years next after the said part was finished, he, she, or they shall be forever barred from recovering the said land, or having any assessment or compensation therefor; *Provided*, Nothing herein contained shall effect the right of *feme covert* or infants until two years after the removal of their respective disabilities.

**Right of way,  
width of.**

**Minor or feme  
covert barred  
in two years  
after removal  
of disability.**

1. **Width of right of way one hundred feet, when.**—Under this section of the charter, if the right of way was not paid for by railroad, nor contract entered into with the landowner, the railroad has right to an easement of one hundred feet on each side of the center of said road, when necessary for railroad purposes, unless the landowner applied in time for assessment of value. Only the number of feet up to a hundred, actually necessary, to be taken from time to time. 5 Pickle, 293.

For rights where land paid for, see 4 Sneed, 528.

2. The owner's possession and cultivation of any part of this one hundred feet is not adverse to railroad, and, although continued for thirty years, will not defeat the easement, and railroad company can take it when necessary for side tracks, etc. 5 Pickle, 293. See general discussion of subject herein, under *Eminent Domain*. See index.

**SEC. 26. Forfeiture and penalty for intrusion.**—If any person shall intrude upon the said railroad, or any part thereof, by any manner of use thereof, or of the rights and privileges connected therewith, without the permission, or contrary to the will of said company, he, she, or they shall forthwith forfeit to the said company all the vehicles that may be so intruded on said road, and the same may be recovered by suit at law, and the person or persons so intruding may also be indicted for misdemeanor,

**Forfeiture for  
intrusion.**

**Penalty for  
same.**



and, upon conviction, fined and imprisoned by any court of competent jurisdiction.

As to the misdemeanor, see 3 Hum., pp. 481-483.

**SEC. 27. Obstructing or damaging road or bridges, punishment.**—If any person shall willfully and maliciously destroy, or in any manner hurt, damage, or obstruct the said railroad, or any bridge, or any vehicle used for or in the transportation thereon, such person or persons so offending shall be liable to be indicted therefor, and, on conviction, shall be imprisoned not more than six nor less than one month, and pay a fine not less than twenty dollars; and shall be further liable to pay all the expenses of repairing the same; and it shall not be competent for any person so offending against the provisions of this clause to defend himself by pleading or giving in evidence that he was the owner, or agent or servant of the owner, of the land where such destruction, hurt, damage, injury, or obstruction was done or caused, at the time the same was caused or done. **Punishment.**

Subsequent legislation has rendered this section of the charter unnecessary, if not inoperative. By § 5387 of the Tenn. Code (M. & V.), it is provided that "whoever willfully and maliciously puts upon the track of any railroad in this state any kind of obstruction, or loosens or removes any of the rails or timbers, or loosens, destroys, or injures any of the machinery, gear, or apparatus of the locomotive or cars, or removes or changes any signal, so as to endanger the safe running of the locomotive and cars, or either or any of them, is guilty of a felony, and, upon conviction of either offense, shall be imprisoned in the penitentiary not less than two nor more than fifteen years." And by § 5388 it is provided that if death ensues from any of the above acts, the offender shall suffer death by hanging; and by the following section, "that if anyone is injured, the offender, if convicted, shall be imprisoned in the penitentiary from three to fifteen years." Similar laws are in force in Alabama, Georgia, and Kentucky.

**SEC. 28. Obstruction a public nuisance.**—Every obstruction to the safe and free passage of vehicles on the said road shall be deemed a public nuisance, and may be abated as such by an officer, agent, or servant of the company, and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

The word "obstruction," as used by railroad men, is not such a term of art as requires explanation by an expert. 6 Heis., 347. See, also, 3 Head, 522; 1 Bax., 55.



**SEC. 29. Storage charges allowed, when.**—The said company shall have the right to take at the storehouses they may establish or annex to their railroad all goods, wares, merchandise, and produce intended for transportation; prescribe the rules of priority, and charge and receive such just and reasonable compensation for storage as they, by rules, may establish (which they shall cause to be published), or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation; *Provided*, That the said company shall not charge or receive storage on goods, wares, merchandise, or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

Not to charge when immediate transportation possible.

Where goods are received and deposited in depot or warehouse, the liability of carrier, as such, ceases *eo instanti*. Thereafter its liability is that of a warehouseman. 7 Pickle, 699. Not extended by Acts 1870, ch. 17. 8 Lea, 32.

The duty of a warehouseman is to exercise ordinary care and diligence only. 5 Pickle, 2, 33, 35.

The delivery of goods and payment of freight are concurrent acts, to be performed at the same time, if road desires. 9 Heis., 564.

Railroad may demand freight charges before receiving and transporting goods.

Railroad has no lien on goods for demurrage, in absence of contract or clause in bill of lading. 15 Lea, 261. Such a clause should be inserted in bill of lading.

By § 2789 (M. & V. Code), freight uncalled for after six months and one day may be sent to one of the nearest principal offices and sold for charges.

In absence of controlling necessity to sell, railroad can only enforce lien by due process of law. 9 Heis., 564.

**SEC. 30. Dividends paid, when.**—The profits of the company, or so much thereof as the board of directors may deem advisable, shall, when the affairs of the company will permit, be semiannually divided among the stockholders in proportion to the stock each may hold.

By Acts 1847-8, ch. 70, sec. 3, this section of the charter was amended so that the company should be required to estimate and pay semiannually to the several holders thereof a sum equal to six per cent. per annum on the capital stock actually paid in, to be charged to the cost of construction, provided a majority of the stockholders, at their first regular meeting, agreed thereto. See act itself in this compilation, in next chapter.

See general discussion of dividends herein. Refer to *index*.

**SEC. 31. Banking prohibited, may insure.**—The said company is hereby expressly prohibited from carrying on any banking operations, but may effect insurance on lives and property transported on the road.

Railroad has right under this section to insure.

It may also have insurance companies to insure for it not only its interest and liability, but the whole value of goods intrusted to it for carriage. In such cases it may collect the whole value, reimburse itself for its special loss, and hold the surplus in trust for the owners. 5 Pick., 2, 45. See, also, 93 U. S., 541; 133 U. S., 409.

As an insurer the liability of the railroad is secondary. 13 Wall. (U. S.), 367.

**SEC. 32. Crossings of roads and lands.**—Whenever, in the construction of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way so as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary to pass through the land of any individual, it shall be their duty to provide for such individual a proper wagon way or ways across said road from one part of his land to the other.

See note to section 22 and 23 of this charter; 3 Pickle, 712; 1 Bax., 55. The term "public road" does not embrace the streets and alleys of a city. 3 Head, 596.

See general discussion herein under *Crossings*. 17 Pick., 197

**SEC. 33. Additional powers.**—The said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted in this charter, and for the successful construction and management of the work.

Under this section company has no authority to guarantee a specified dividend on its stock as an inducement to subscribers to take it. 1 Pickle, 703.

See Acts 1870, ch. 14, included in this compilation, in next chapter, which purports to construe the powers granted under this section, and empower the company to borrow a sum not exceeding three million dollars. It is not, however, in the province of the legislature to expound the meaning of existing laws. They can say what the law shall be, but not what it is. 2 Hum., 304; see 1 Bax., 319.

**SEC. 34. Charter, how amended.**—This charter shall be amendable from time to time by the legislature, whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments; and, when such amendments shall be adopted by the

legislature and submitted to the directory, and be accepted and adopted unanimously by the president and directors, they shall be obligatory on the stockholders, and not otherwise.

1. **Petition for amendment not necessary.**—An amendment accepted and adopted by the president and directors unanimously will be valid, although not recommended by the unanimous petition of the president and directors, that being merely directory. 8 Bax., 108.

2. **Charter irrevocable.**—As the legislature did not reserve in this charter the power to modify, amend, or repeal the same, or any part thereof, all the rights granted herein are irrevocable. The legislature cannot *thrust* an amendment upon it or enforce the abrogation of any right conferred.

The act of incorporation, being legal in itself, is a contract between the state and the corporation, investing it with a legal estate in the franchises named in the charter, and, being such a contract, it is under the protection of the constitution of the United States, and is irrevocable and inviolable by any act of the legislature, or even a subsequent constitutional convention of the state, without the consent of the corporation. This has been settled since the Dartmouth College case (4 Wheaton, U. S., 468), and is now supported and strengthened by a long and unbroken chain of authorities.

**Tennessee authorities.**—9 Bax., 442; 3 Cold., 98, 496; 1 Sneed, 114; 9 Yer., 488; 11 Lea, 336; 3 Hum., 305; 1 Heis., 284; 3 Tenn. Chy., 405; 13 Lea, 400; 2 Pickle, 614; 3 Pickle, 155; 1 Head, 81; 3 Sneed, 629.

**United States authorities.**—80 U. S., 568 (13 Wall., 264); 83 U. S., 326 (16 Wall., 244); 87 U. S., 282 (20 Wall., 36); 29 U. S., 938-9 (4 Peters, 514); 1 Black, 436; 117 U. S., 129 (830), 139 (833); 4 Wheat. (U. S.), 468.

#### SEC. 35. Exemption from military, jury, and road duty.—

The president, directors, clerks, agents, officers, and servants of said company shall be exempt from military duty, except in cases of invasion or insurrection, and shall also be exempt from serving on juries and working on public roads.

This is class legislation, and unconstitutional. 4 Lea, 316.

This section was first decided to be valid in Alabama. *Johnson v. State* (1890). 41 A. & E. R. R. Cases, 275, but subsequently overruled. 91 Ala., 70; 53 A. & E. R. R. Cases, 37.

SEC. 36. **Slaves, power to buy.**—The company shall have full power and authority to purchase and own such number of slaves as may be necessary for the construction of said road, and for keeping the same in repair.

Slavery abolished by Constitution 1870. See 3 Heis., 653; 2 Cold., 14.

SEC. 37. **Directors trustees in case of dissolution.**—If, by decree or otherwise, the said corporation shall be dissolved, the president and directors of said company are created trustees, with such powers only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and



distribute the property and effects of the company to those who may be entitled thereto under the charter.

For what causes dissolution may take place, see *Charter*, subhead "Forfeiture of," herein.

**SEC. 38. Exemption from taxation.**—The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including the workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer.

1. Under this section, an elevator, though situated outside the right of way, if necessary and used as a depot or warehouse, and located at such a distance on account of natural disadvantages, was exempt, during the twenty years, together with the side track, etc., necessary to connect it with the road, and the land on which both are constructed. *State and County v. N., C. & St. L. Ry.*, 2 Pickle, 438.

2. Exemptions from taxation in charters prior to 1870 and accepted by corporators and acted upon, is a contract binding upon state which cannot be impaired by subsequent legislation or constitutional provisions. 2 Pickle, 614; 3 Cold., 88, 496; 1 Sneed, 114; 9 Yer., 488.

See, also, 13 Lea, 400; 11 Lea, 336; 9 Bax., 442, 546; 8 Bax., 539; 6 Bax., 415, 441; 3 Pickle, 155; 3 Hum., 305; 1 Heis., 284; 3 Sneed, 629; 1 Head, 81.

See, also, 80 U. S., 568; 83 U. S., 326; 87 U. S., 282; 29 U. S., 939.

3. The exemption of the shares of stock from taxation in this section, applies to shares in hands of individual stockholders. 117 U. S., 830.

4. A grant to railroad of all rights, powers, and privileges of another company entitles it to the same exemptions from taxation that other company had. 117 U. S., 833.

For right of purchaser of railroad as to exemptions, see 12 Lea, 583.

**SEC. 39. Road to be completed when.**—The railroad authorized by this act shall be commenced within three years after the passage of this act, and shall be finished within six years thereafter; otherwise the charter hereby granted shall be void.

Charter privileges must be exercised within the time limited by the charter or subsequent legislation. *Rorer on Railroads*, p. 332.

**SEC. 40. Branches, who may build, duty of this road as to.**—Any individual or individuals, company or body corporate, with permission of the legislature of this state, may hereafter construct branches to unite with the said Nashville & Chattanooga Railroad; and it shall be the duty of said company, when required, to receive on their road the full loaded freight cars from such branches, and transport the same to their destination, and to return them without changing the loads thereof, or charging for the transportation

Connection  
with  
branches  
and right to  
run loaded  
cars over, etc

of the goods, wares, merchandise, and produce therein any greater rate of freight than they charge for similar goods, wares, merchandise, and produce in their own cars; *Provided*, That the company shall not be compelled to receive such cars on their road unless they are constructed in the same manner and are of equal strength with their own cars, of which the engineer of the main road shall be the judge; *And provided*, That the company shall not be required to receive any cars from such branches without receiving payment for at least twenty miles transportation; *And provided also*, That the said company shall be entitled, in all respects, to similar and equal privileges on any branches constructed to unite with their road, subject to the same restraints. (Acts Tenn., 1845-6, ch. 1, passed December 11, 1845.)

What freight rates may be charged branches.

1. Connecting road, or branch, however short, under this section, may be charged by this company the regular freight for at least *twenty miles*, and unless it is paid this company is not required to receive it. It is questionable whether this clause is valid now.

2. The privilege granted other roads of connecting with this is obligatory while this section is in force, but the section may be repealed by subsequent legislation, as it is not in the nature of a contract. See Rorer on Railroads, p. 28.

3. One railroad cannot bind connecting road as to rates to be charged, unless by agreement between them. 7 Bax., 345.

4. If articles shipped are of different character than those named in bill of lading, and upon which rates are higher, connecting line may transport, charge, and collect increased rate. 7 Bax., 345.

5. Receiving carrier is liable for goods lost by connecting line, in the absence of agreement or clause in bill of lading to the contrary. 6 Heis., 143, 208.

6. If liability is not restricted, and goods are consigned to a point beyond terminus, but on line of connecting route, carrier is bound to deliver at destination. 7 Heis., 253.

7. Trains of one road running over connecting line and under exclusive control of its own servants, are liable for all damages occurring through negligence; but if servants of both companies jointly control the train, both companies are liable. 6 Heis., 347.

8. **Branch roads.**—As to right of this company to build branch roads, see discussion herein under *Branch Roads*; refer to index.

9. **Same.**—Under Acts of Tenn., 1849-50, ch. CCLXVI., sec. 3, it was provided that "the Shelbyville branch and all other branches as may be made, shall have all the rights and privileges and be placed in all respects on the same footing with the Nashville & Chattanooga Railroad. This is a very important act, and one that has heretofore been overlooked. Under it all branches lawfully constructed by this railway have all the rights and privileges of the main stem. See discussion herein; refer to index.

## CHAPTER II.

ACTS AND DECREES AMENDING CHARTER OF AND RELATING  
TO THE MAIN STEM OF THE N., C. & ST. L. RY. WHICH  
WAS FORMERLY THE N. & C. R. R. CO., IN TEN-  
NESSEE, ALABAMA. AND GEORGIA.

This chapter contains only those decrees and acts relating *exclusively* to the main stem of the N., C. & St. L. Ry., which was formerly the Nashville & Chattanooga Railroad Company. Decrees and acts affecting its other branches, such as its Northwestern branch, Lebanon branch, etc., will be found in subsequent chapters relating to those roads. As the original Nashville & Chattanooga Railroad Company ran through a portion of Tennessee, Alabama, and Georgia, this chapter will contain all decrees and acts of those states affecting the road, in the order mentioned.

## DECREES.

N. & C. R. R. CO. ET AL., EX PARTE. [PETITION.]

**Decree changing name.**—This cause came on to be heard May 31, 1873, before the Hon. W. F. Cooper, chancellor, pending in the chancery court for the county of Davidson, state of Tennessee, upon the petition of the Nashville & Chattanooga Railroad Company, incorporated by the general assembly of Tennessee, and of its directors, E. W. Cole, Thomas C. Whiteside, Godfrey M. Fogg, Thomas Lipscomb, John F. Anderson, John B. Hawkins, John W. Childress, W. S. Huggins, A. E. Patton, Ben May, V. K. Stevenson, John M. Bass, Edward L. Jordan, Jackson Pryor, John P. King, John Frizzell, W. R. Butler, and A. Frierson, the last two being state directors, when it appeared to the court that on January 9, 1873, the petition in this cause was filed, and which has been enrolled in book No. 3, page 169, and that by said petition the court is asked to pronounce a decree amending the charter of said company as specified in said petition; that on January 27, 1873, the clerk and master of this court caused publication to be made for thirty days in the *Republican Banner*, a newspaper published in the city of Nashville, Tennessee, which publication was in the words and figures following, to wit:



No. 7423.

IN CHANCERY AT NASHVILLE.

STATE OF TENNESSEE,

OFFICE CLERK AND MASTER CHANCERY COURT.

NASHVILLE, January 27, 1873.

WHEREAS, The Nashville & Chattanooga Railroad Company and its directors, E. W. Cole, president, and others, have filed their petition in this court to have the charter of said company amended as follows, viz.: That said corporate body shall be known and designated by the name and title of "The Nashville, Chattanooga & St. Louis Railway" instead of the Nashville & Chattanooga Railroad Company: It is therefore ordered that all persons desiring to resist the amendment of said charter or the granting the prayer of said petitioners, enter their appearance herein at the courthouse at Nashville, Tennessee, on the first Monday in April next, 1873, that being the next regular term of said court, and then and there show cause, if any they have or can, why the prayer of said petitioners and the amendment of said charter should not be granted, or the matter of said petition will be heard *ex parte*, and that a copy of this order be published for thirty days in the *Nashville Republican Banner*.

NATHANIEL BAXTER, JR.,

*Clerk and Master.*

FOGG, WHITESIDE &amp; FRIZZELL,

*Solicitors for Petitioners.*

It also appearing to the court that, by an act of the general assembly of the state of Tennessee, ch. 1, passed December 11, 1845, entitled "An act to incorporate the Nashville & Chattanooga Railroad Company," and the act amendatory thereof, the said Nashville & Chattanooga Railroad Company was incorporated for the purpose of establishing a communication by railroad between Nashville & Chattanooga, in the state of Tennessee: that, by said acts of the assembly and others of a general character, there were conferred upon said company the powers and privileges incident and necessary to the transaction of the business for which it was incorporated, and among which was the power to purchase and own connecting roads; that said

company has purchased, and is now the owner, of the railroad known as the Nashville & Northwestern Railroad, running from Nashville, Tennessee, to Hickman, in Kentucky, in the direction of St. Louis, in Missouri; that, under the authority aforesaid, said company is now operating a railroad from Chattanooga, via Nashville, to Hickman, its principal office being at Nashville; that the persons named as directors in said petition constitute the president and directors of said company; that, in pursuance of the provisions of sec. 34 of said act of December 11, 1845, the said president and directors unanimously petition that the charter of said company may be amended in the manner mentioned in the petition filed in this court. It also appeared that no person has appeared to show cause why the prayer of said petition should not be granted.

The court being satisfied that the prayer of said petition is legitimate and proper, and deeming the same necessary, and not inconsistent with the statutory provisions upon the subject nor the general laws of the state, nor hurtful to the public good, doth order, adjudge, and decree, in pursuance of the powers vested in courts of chancery by virtue of paragraph 23, sec. 15, of the acts of the general assembly of Tennessee, ch. 54, approved January 30, 1871, entitled "An act to authorize the chancery courts of this state to grant letters of corporation;" that the act of the general assembly aforesaid, incorporating the Nashville & Chattanooga Railroad Company, passed December 11, 1845, be altered, amended, and changed so that said company and body corporate shall be known and designated by the name and style of "The Nashville, Chattanooga & St. Louis Railway," instead of the "Nashville & Chattanooga Railroad Company," according to the prayer of the petition filed in this cause. It is further ordered that the Nashville & Chattanooga Railroad Company pay the costs of this proceeding, for which execution may issue, and, upon the payment of the same, the clerk and master will issue a certified copy of this decree for registration. (Registered May 31, 1873, in minute book "X," p. 220-222, in chancery court at Nashville, Tenn.)

1. This decree, changing the name of the corporation to the Nashville, Chattanooga & St. Louis Railway, was clearly within the power of

the chancery court at that time, and the decree is valid. 3 Bax., 98; 1 Tenn. Chy. Rep., 83, 95, 97. See, also, 12 Lea, 97, 103; 11 Lea, 3; 9 Lea, 380; 1 Lea, 462.

2. For decree of chancery court, amending the charter in other respects, see further on in this chapter.

## ACTS OF TENNESSEE AMENDING CHARTER.

### 1. Charter amended, allowing stockholders one vote for each share of stock.

SECTION 4. *Be it further enacted*, That the charter of the East Tennessee & Virginia Railroad Company, and of *all other railroads* in the state, be so amended that hereafter, in all elections held by any of said companies, every stockholder shall be entitled to one vote for each share of stock owned by him, provided it shall not interfere with the vested rights of said companies.

SEC. 5. That this act shall take effect from and after its passage. (Acts Tenn., 1868-9, ch. 2, sec. 4, p. 83.)

1. This amendment was accepted by the company September 20, 1875, and now in all elections each share is entitled to one vote. See discussion of right, method, and scale of voting, herein. Refer to index.

2. Previous to this time the chancery court at Nashville had amended the charter of the company so as to allow "the owner of one or more shares, up to and including four, *one* vote; the owner of a greater number of shares than four, *one* vote for each four shares over and above four." Entered May 13, 1872, minute book "V," p. 174.

### 2. Charter amended, stockholders at any meeting may fix time and place of next meeting.

SECTION IV. *Be it further enacted*, That the charter of the Nashville & Chattanooga Railroad Company be so amended that the stockholders may at any meeting fix on the day and place or places where the subsequent meetings of stockholders and election of directors shall be held.

SEC. V. *Be it further enacted*, That this act shall take effect from and after its passage. (Acts Tenn., 1857-8, ch. 8, sec. 4; passed November 11, 1857.)

### 3. Charter amended, directors to make by-laws and appoint judges and clerks of future elections, dividends on stock, how paid.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the board of commissioners of the Nashville



& Chattanooga Railroad is hereby authorized and empowered to appoint three judges and two clerks, Election of directors. for the purpose of holding an election for fifteen directors of said company on January 24, 1848,\* and upon the certificate of said judges the said directors shall be authorized to qualify as directors, and to make all rules, regu- To make by-laws, rules, etc. lations, and by-laws necessary for the government of said company and management of its affairs not inconsistent with the general laws of the land.

\*Up to this time there was no board of directors; hence there could be no unanimous petition of the president and directors, and no unanimous acceptance and adoption, as prescribed in section 34 of the charter, and this mode was adopted in lieu of the one therein prescribed for the ascertaining of the consent of the corporation to an amendment of its charter.

At the first meeting of the stockholders, as provided in this act, the following resolution was unanimously adopted: "Resolved (a majority of the stockholders now agreeing thereto). That the assent of the company is hereby given to the amendments proposed in their original charter by an act of the general assembly of the state of Tennessee, passed January 21, 1848, entitled 'An act to amend the charter of the Nashville & Chattanooga Railroad Company.'"

It will be observed that the first section of this act so amends the ninth section of the original charter as to confer upon the *directors* the power to make "all rules, regulations, and by-laws," etc., instead of the stockholders at their first meeting, as provided in said ninth section.

SEC. 2. *Be it enacted*, That the board of directors of said company shall have power to appoint three judges Board to appoint judges and clerks. and two clerks, from year to year, for the purpose of holding elections for directors.

SEC. 3. *Be it enacted*, That the charter of said company be further so amended that the said company be required to estimate and pay semiannually, to the sev- Paid stock to draw interest, how. eral holders thereof, a sum equal to six per cent. per annum on the capital stock of said company actually paid in, to be charged to the cost of construction; *Provided*, A majority of the stockholders at their first regular meeting agree thereto. (Acts Tenn., 1847-8, ch. 70, passed January 21, 1848.)

**4. Charter amended allowing city of Charleston and the Georgia Railroad & Banking Co. to have representation in board of directors.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the charter of the Nashville & Chatta-

nooga Railroad Company is hereby so amended that it may be lawful for the city of Charleston, in South Carolina, to appoint two of her citizens to represent her stock in said company as directors of the board of said company, with all the powers and privileges which belong to the other directors; and, in like manner, the Georgia Railroad & Banking Company shall have the right to appoint one director to represent its stock; *Provided*, That eight of the directors shall hereafter, as heretofore, constitute a quorum for the transaction of business. (Acts Tenn., 1849-50, ch. 266, p. 530.)

The city of Charleston subscribed for \$500,000 of the stock in this company, as per its ordinance passed April 11, 1848, and the Georgia Railroad & Banking Company subscribed for \$250,000, as per resolution of that company also passed April 11, 1848, the conditions of each subscription being, among other things, that they should be allowed representation in the board; hence the above act.

**5. Charter amended, may lease Winchester & Alabama Railroad, and any other railroad connecting with Nashville & Chattanooga Railroad Company, how.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the Nashville & Chattanooga Railroad Company are hereby authorized and empowered to lease the Winchester & Alabama Railroad, and the branch to Fayetteville, or any other railroad connecting with said Nashville & Chattanooga Railroad, for such time and upon such terms and conditions as may be agreed upon between the president and directors of the said Nashville & Chattanooga Railroad Company and the president and directors of the railroad company contracted with.

SEC. 2. *Be it further enacted*, That the companies of all laterals and main line railroad companies shall be entitled to the benefits of this act, and shall have the benefits and privileges and powers conferred on the said companies mentioned in the first section of this act.

SEC. 3. *Be it further enacted*, That all railroad companies availing themselves of the provisions of this act, as well as the companies specified in the first section, shall, in the hands of the lessees, be liable to all liens in favor of the state, and to all liabilities imposed by their charters or the general law of the

Extended to  
other roads.

land, in the same manner that the company or companies so leasing would have been had no lease been made; *Provided*, That the payment of the sinking fund provided for by existing laws shall be secured by the company so leasing said road. (Acts Tenn., 1857-8, ch. 8; passed November 11, 1857.)

Since the passage of this act there have been enacted ample *general* laws for leasing of railroads. See *Lease*, herein. Refer to index.

This act, however, is still in force. The general laws furnish *additional* methods.

## **6. Nashville & Chattanooga Railroad allowed to subscribe for stock in Chattanooga, Harrison, Georgetown & Charleston Railroad Company.**

*Be it enacted*, That the Nashville & Chattanooga Railroad Company, the East Tennessee & Georgia Railroad Company, and the Memphis & Charleston Railroad Company, shall each be authorized to subscribe for stock in the Chattanooga, Harrison, Georgetown & Charleston Railroad Company, provided the stockholders of the company proposing to make a subscription agree thereto. (Acts Tenn., 1853-4, ch. 319, sec. 20; passed February 24, 1854.)

## **ACTS OF TENNESSEE RELATING TO NASHVILLE & CHATTANOOGA RAILROAD COMPANY.**

### **1. Bridge over Tennessee river allowed to be constructed by Tennessee legislature, how.**

SECTION 2. *Be it further enacted*, That whereas a considerable portion of the bridge authorized by the act entitled "An act to amend the charter of the Nashville & Chattanooga Railroad Company," passed January 19, 1850, has been recently destroyed by fire; and, whereas, the said railroad company, in erecting their bridge, constructed a drawbridge, which remains in the portion not consumed by the recent burning, that the aforesaid act be so amended that the said Nashville & Chattanooga Railroad Company shall not be required to build any part of their bridge thirty feet or at any other particular elevation above extreme high-water mark, provided they keep and maintain a good draw or revolving bridge, opening to a width



sufficient to allow the free passage of steamboats and other water crafts, and so as, when open, to leave a clear space between the piers at the draw at least sixty feet. (Acts Tenn., 1855-6, ch. 239, sec. 2, p. 487; passed January 3, 1856.)

The old bridge that was burned was required to be at least thirty feet above extreme high-water mark between the two piers next to the western bank, or any two piers the company might deem best, the distance, however, between the two so selected to be at least one hundred and sixty feet. (Acts Tenn., 1849-50, ch. 266, sec. 2.)

**Alabama acts.**—The legislature of Alabama, by Acts 1849-50, No. 123, sec. 2, passed a similar act to that of Tennessee of 1849-50, ch. 266, sec. 2, as set out above, and subsequently passed an act identical with that of Tennessee of 1855-6, ch. 239, p. 487, also above set out. See Acts Ala., 1855-6, p. 11, in this chapter.

After the bridge had been built and the draw put in, under the Acts of 1855-6, p. 11, of Alabama, and Acts of 1855-6, ch. 239, p. 487, of Tennessee, the legislature of Alabama, by Acts 1888-9, p. 443, again required the bridge to be at least *thirty* feet above extreme high water, etc. This part of the act, however, is void as against the company's vested rights. It is further inoperative, as congress, under Acts 1888 and 1890, has now taken charge of bridges over navigable streams. See discussion of this in notes to sec. 22 of Nashville & Chattanooga Railroad charter.

## 2. Nashville & Chattanooga Railroad Company allowed to contract with Memphis & Charleston Railroad for use of road between Stevenson and Chattanooga, how; state aid.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the Memphis & Charleston Railroad Com-

**Joint use of track from Stevenson to Chattanooga.** pany and Nashville & Chattanooga Railroad Company may, by agreement, contract for the joint use or ownership of that part of the Nashville & Chattanooga Railroad extending from Stevenson to Chattanooga, on such terms as said companies may mutually agree upon.

SEC. 2. The contract, if made, shall be submitted to the governor and road commissioner of the state, and, if approved by them, then, in order to provide for the extension in making necessary additional tracks and otherwise preparing the road to accommodate fully the trains and business of both companies, and to enable the Memphis & Charleston Company to comply with the contract of consolidation, the said Memphis & Charleston Railroad Company shall be entitled to receive from the governor such state bonds as are issued under the internal improvement laws of the state, to an amount equal to one-half of the amount heretofore

**Contract to be approved by governor.**

**Bonds for improving track, etc.**

given by law to said company, to enable them to make an independent extension of their road to Chattanooga, and, in lieu of said former grant of state aid, the amount to be ascertained by report of the road commissioner to the governor.

SEC. 3. For the payment of such bonds and the interest thereon, the said Memphis & Charleston Railroad Company shall be liable, and their entire road and appurtenances be bound, to the state in the same manner as for state bonds heretofore issued to said company; *Provided*, <sup>Lien.</sup>

That section 5 of an act passed February 21, 1856, ch. 120, shall apply in full force to said Memphis & Charleston Railroad Company.

SEC. 4. The bonds of the state shall not issue to said company until it shall have expended twenty thousand dollars in the improvement of said Nashville & Chattanooga Railroad from Stevenson to Chattanooga, this fact to be ascertained by report of the commissioner of roads and confirmed by the governor, and the balance of the bonds to be issued shall not be issued to a greater amount than the amount of work actually done by said company at the time of application, according to the true intent and meaning of the foregoing provisions. (Acts Tenn., 1857-8, ch. 150; passed March 19, 1858.) <sup>Not to issue till when.</sup>

Trains of one road running over connecting line and under exclusive control of its own servants, is liable for all damages occurring through negligence. But if servants of both companies jointly control the train, both companies are liable. 6 Heis. (Tenn.), 347.

### 3. Shelbyville branch and other branches to have rights and privileges of Nashville & Chattanooga Railroad Company.

SEC. 3. *Be it enacted*, That the Shelbyville branch, and such other branches of the Nashville & Chattanooga road as may be made, shall have all the rights and privileges, and shall be placed in all respects on the same footing with the Nashville & Chattanooga road; *Provided*, That nothing in this act shall be so construed as to diminish the liability of the stockholders of the company in any way. (Acts Tenn., 1849-50, ch. 266, sec. 3; passed January 19, 1850.)

This is a very important act. It does not expressly confer the power on the railway company to *build branches* in the future, but it at least

clothes the branches that it acquires the right to build, with all the rights and privileges of the main stem.

#### 4. Watchman at Church street crossing in Nashville required.

SEC. 5. *Be it further enacted*, That it shall be made the duty of the president and directors of the Nashville & Chattanooga Railroad Company to keep at the crossing at the depot in the city of Nashville a man employed to notify travelers or persons passing on the Richland turnpike of the approach and departure of the cars, and that said cars shall not blow their whistle in coming into or going out of said depot; that it shall be a misdemeanor in the superintendent at said depot to violate this act, and punished as other cases of misdemeanor; that any person or persons may sue for and recover the sum of one hundred dollars from the president and directors of said road for a violation of this act. (Acts Tenn., 1857-8, ch. 130, passed March 15, 1858.)

This act was not made as, nor accepted by the company as an amendment to its charter. It was simply a *police* regulation, and as such has doubtless long since been repealed by *implication*.

#### 5. Nashville & Chattanooga Railroad Company authorized to lease Nashville & Northwestern Railroad, terms and conditions.

WHEREAS, At a meeting of the directors of the Nashville & Northwestern Railroad Company, held in the city of  
**Preamble.** Nashville on the twenty-seventh day of October, 1869, E. W. Cole, president of the Nashville & Chattanooga Railroad Company, submitted a written proposition, on the part of said Nashville & Chattanooga Railroad Company, for a lease to said company of the Nashville & Northwestern Railroad, for a term of six years, which proposition was in the words and figures following:

The Nashville & Chattanooga Railroad Company propose to  
 lease the Nashville & Northwestern Railroad, for a  
 period of six years, upon the following terms and  
 conditions:

It will expend upon the roadbed, superstructures, bridges,  
 and trestles, and in the repair and purchase of rolling  
 stock, within the next six months, the sum of \$100,-

Proposition  
or agreement  
of lease.

Repairs, etc.



000, and as speedily as possible put the road in as good condition as other connecting roads, and supply it with rolling stock sufficient to meet the requirements of the business of the road in freights and passengers, and of the same quality and character as similar rolling stock of the Nashville & Chattanooga road, and continue to keep the road in good condition, and the rolling stock in like good order and condition, for and during the full term of the lease, and the same is fully ended, and to return the road and rolling stock in like order and condition at the expiration of the lease; all repairs, improvements, and additions to be made at the usual reasonable and customary prices for the time being.

The present rolling stock, materials, and personalty of the Nashville & Northwestern Railroad Company on hand, and to be valued by three persons, one to be selected by each of the contracting parties, and they to select a third, and taken by the Nashville & Chattanooga road at the valuation, and returned in kind at the end of the lease upon like valuation. Valuation.

The road shall continue, during the lease, to be operated on its present line, and upon every part of it, without discrimination against any part, unless with the consent of the board of directors of the Nashville & Northwestern Railroad Company, and the lessee shall so operate as to foster and encourage the local, as well as through, business; and such and so many trains for the accommodation of freight and passengers shall be run as are usual and customary on roads of similar length and importance, and necessary to perform the business offered. Line of road.

The tariff of through freights and passengers are to be ratably divided between the roads in proportion to the length of the two roads to each other, or the distances carried on each, and the local earnings are to be credited to the lessor. Tariff.

The lessee agrees to make no charge for use of tools, rent of shops, or yard room, or pay of yardmen, at Nashville, during the continuance of this lease. Tools, etc.

One-third of the salaries of the president, superintendent, secretary and treasurer, freight and passenger agents, and engineer of the Nashville & Chattanooga Railroad Company shall be paid out of the earnings of the Nashville & Northwestern Railroad, and the share of the lessor of these salaries shall not exceed the following sums: President, \$3,000 per annum; superintendent, \$2,000; secretary and treasurer, \$2,000; general freight agent, \$500; general passenger agent, \$500; engineer, \$1,000. There shall also be paid out of the earnings of the road the salary of an agent, to be appointed by the board of directors of the Nashville & Northwestern Railroad Company, as hereinafter provided, to superintend the interests of said company under this lease, which salary is fixed at \$——. No other agent or officers shall be employed, except such as are necessary to operating the road, and devote their whole time and attention to the business of the road, and as are usual in such cases, who shall be paid out of the earnings of the road the same compensation which is allowed similar agents and officers of the Nashville & Chattanooga Railroad Company for similar services. The board of directors of the Nashville & Northwestern Railroad Company may elect

**Officers' salaries, etc.**

**Agent of Nashville & Northwestern Railroad.**

an agent, to hold his office during the pleasure of the board, to represent said company and protect its interests during the lease, whose duty it shall be to give a general supervision to all the business of the road, and all transactions under this lease, with the right to have free access at all times to the rolling stock, property, and effects used in running the road, with a view to ascertaining its condition, and whether any or what repairs are required, and to the books of the business of the two roads, so far as they relate to or have any connection with the business or operations under this lease.

He shall be consulted as to all expenses, ordinary or extraordinary, but without having the right to prevent them, if deemed necessary by the lessée. If, however, the agent shall dissent, the matter shall be suspended until the contracting parties have come to some agreement or the matter arbitrated as hereinafter provided.

**Expenses.**

The agent shall make a report to the board of the lessor at least once in every three months, or oftener, if necessary or required.

**Reports.**

All matters of difference arising under this lease, either as to the operation of the road, the expense incurred, or otherwise, which cannot be amicably adjusted by committees of the two boards, shall be submitted at once to the arbitration and award of three railroad officers or engineers, one to be selected by each of the parties and one by these two, whose decision shall be final and binding on the contracting parties.

**Arbitration.**

All depot houses, sidings, buildings, and appurtenances of the road shall be returned with the roadbed and rolling stock, in good order and condition, at the expiration of the lease.

**Expiration of lease.**

Regular and exact accounts shall be kept by the lessee of all the earnings and expenditures in operating the road, to which the agent above provided for shall have full access; and monthly reports and settlements shall be made between the parties.

**Accounts.**

The lessee is to have control of the road and of its operations under the lease, and to receive all the earnings of its business, and shall be entitled, out of these earnings, to pay the salaries as hereinbefore provided, and all the expenses of running said road, and to reimburse itself the money advanced to put the road in good condition, and to furnish rolling stock as herein stipulated, with interest.

**Earnings.**

Any surplus of earnings after these disbursements shall be paid to the State of Tennessee monthly, at the expiration of each and every month during the time of the lease, to be credited to the interest due, or to become due, to the state upon the bonds issued to the lessor, and which are a lien by statute upon said road. If the surplus earnings should, during the term of lease, pay off the arrears of interest due the state, and exceed the interest which may thereafter fall due semiannually, such excess shall be paid to the lessor or its order.

**Surplus earnings.**

It is further agreed that no agent or officer of either road



shall be allowed to engage in any speculation or business connected, or have anything to do, with the transportation or other business of the road.

[SIGNED.]

E. W. COLE,

*Pres. of the N. & C. R. R. Co.*

AND, WHEREAS, The board of directors of said Nashville & Northwestern Railroad Company, at their meeting aforesaid,  
**Preamble.** having duly considered said proposition, recommend its acceptance to the stockholders of said company; and,

WHEREAS, At a meeting of said stockholders, duly and legally called and held at the city of Nashville, on the twenty-eighth day of October, 1869, a majority of them voted in favor of accepting the proposition for said lease as above set forth; and,

WHEREAS, Said Nashville & Northwestern Road is at present in the hands of the state authorities, whereby the assent of the  
**Same.** State of Tennessee is made necessary to the consummation of said contract and to the validity of said lease; and,

WHEREAS, In the opinion of this general assembly, it is manifestly to the interest of the state as well as of said railroad companies and the public that said proposition should be accepted and said lease approved, ratified, and made obligatory on all the parties thereto; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the above proposition be, and the same

**Proposition accepted.** is hereby, accepted, and said Nashville & Chattanooga Railroad Company is hereby authorized to take possession of and control of said Nashville & Northwestern Railroad, and the property thereof, according to the terms and conditions of the proposition hereinafter set forth; *Provided,* That the present president and directors of the Nashville & Chattanooga Railroad Company, and their successors in office, before entering upon the discharge of their duties under the foregoing lease, and before taking possession of said North-  
**Proviso.** western Railroad, shall first enter into bond, with two

or more sufficient securities, in the penal sum of one hundred thousand dollars, payable to the State of Tennessee, for the faithful performance of the terms and stipulations of

said lease in each and every particular, and for a prompt and faithful compliance with the terms, provisions, and restrictions hereinafter provided by law, which bond shall be approved by the governor, comptroller, and treasurer of the state, and filed in the office of the comptroller.

SEC. 2. That the agent provided for in said lease shall be chosen by the board of directors of said Nashville & Northwestern Railroad Company, with the concurrence of the governor of the state, whose duty it shall be to report to the governor as often as he is required by said lease to report to the Nashville & Northwestern Railroad Company, and he shall be regarded as joint agent for said company and the state, and his salary, which shall be one hundred and fifty dollars per month, shall be paid out of the earnings of said Nashville & Northwestern Railroad.

Agent, how  
chosen, etc.

SEC. 3. That nothing herein contained shall be so construed as to take the Nashville & Northwestern Railroad out of the provisions of any law or laws that may be passed by the general assembly of the state; but the said Northwestern Railroad shall be subject to the provisions of such law or laws which may be passed as aforesaid, as though this act had never been passed.

Not released  
from laws.

SEC. 4. That the foregoing lease is ratified, subject to the provisions of this act, with the express reservation to the state of the right to terminate the same at any time without notice, by the act of the general assembly of the state; *Provided*, That should the state, or a purchaser from the state of said Nashville & Northwestern Railroad, demand possession of said road before the Nashville & Chattanooga Road has been reimbursed of all necessary and proper expenditures in operating said Northwestern Railroad from the earnings of said road, such excess of expenditures over earnings shall be paid by the state or said purchaser to the Nashville & Chattanooga Railroad Company.

Reservation.

Proviso.

SEC. 5. That this act shall take effect from and after its passage. (Acts 1869-70, ch. 21; passed December 9, 1869.)

**6. Alabama & Chattanooga Railroad Company allowed to cross tracks of Nashville & Chattanooga Railroad Company near Lookout Mountain, provided it keeps in repair switches, fixtures, etc., at crossings.**

SEC. II. *Be it further enacted*, That D. N. Stanton, president, and J. T. Burn, J. C. Stanton, Lewis Rice, May survey route, etc. John Dermit, J. P. Roberson, Seth Adams, S. A. Carlton, Wm. Claffin, Robert T. Paine, Jr., W. P. Rathburn, and R. M. Patton, directors of said railroad company, or their successors in office, or a majority of them, or their chief engineer, whose action shall be approved by the president and a majority of the then directors of said company, are hereby authorized and empowered to survey, lay off, locate, extend, build, and construct their said railroad, commencing at or near Wauhatchie station, on the Nashville & Chattanooga Railroad, in Hamilton county, Tennessee, by the nearest practicable route to such point within the corporate limits of the city of Chattanooga, Tenn., as they may deem most advantageous for making connections with other roads now in operation, or that may hereafter terminate at that point; and for this purpose may locate their said road so as to cross the track of the Nashville & Chattanooga Railroad Company west of Lookout Mountain, and recross the track of said Nashville & Chattanooga Railroad east of said Lookout Mountain; *Provided*, Proviso. *however*, That the Alabama & Chattanooga Railroad Company shall, at its own expense, build, erect, and keep in repair all necessary switches and fixtures at said crossings, and shall not unnecessarily hinder or delay the passage of trains upon said Nashville & Chattanooga Railroad. (Acts Tenn., 1869-70, ch. 53, sec. 2.)

The Alabama Great Southern Railroad was organized November 30, 1877, and acquired the property of the Alabama & Chattanooga Railroad, sold under foreclosure January 22, 1877.

**7. Nashville, Murfreesboro, Shelbyville, and Winchester authorized to raise money or issue bonds to pay for stock in Nashville & Chattanooga Railroad Company.**

WHEREAS, The town of Nashville, by its board of mayor and aldermen, has authorized the mayor of said town to subscribe



for 20,000 shares of the capital stock of the Nashville & Chattanooga Railroad, which subscription has not, however, yet in fact been made; and,

WHEREAS, It is necessary that further power should be extended to the corporate authorities of said town, to **Preamble.**  
enable them to pay the calls upon said stock: therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the town of Nashville be, and is hereby, authorized, through its mayor and aldermen, and by the subscription of its mayor on the books of the Nashville & Chattanooga Railroad Company, to subscribe for **Nashville may subscribe stock.**  
twenty thousand shares of the capital stock of said company.

SEC. 2. *Be it enacted*, That the mayor and aldermen of Nashville be, and are hereby, authorized to raise money on loan, by pledging the faith of the corporation, by pledging a portion of its taxes, by mortgage, or otherwise, **May borrow money.**  
as to them may seem best, to an amount not exceeding what may be demanded for the calls upon the stock aforesaid, and said loan may be created for such length of time, and payable in such manner, as to the said mayor and aldermen may be deemed best.

SEC. 3. *Be it enacted*, That the said mayor and aldermen be, and they are hereby, authorized, if to them it shall seem best, instead of making a loan as aforesaid for the whole amount of said calls, or any part thereof, to issue **May issue bonds.**  
the bonds of the said corporation, under its corporate seal, to be signed by its mayor and countersigned by its recorder, for the whole or any part of said calls which may be made from time to time by said railroad company on said stock.

SEC. 4. *Be it enacted*, That the bonds so to be issued shall be in sums not less than five hundred dollars each; that they shall not bear a greater rate of interest **Description of bonds.**  
than six per centum per annum, and shall not be payable at a greater distance of time from their respective dates than thirty years.

SEC. 5. *Be it enacted*, That a like privilege of subscription, and a like power to issue bonds and to raise money on loan, be

**Murfreesboro.** extended to the following incorporated towns, to wit: **Shelbyville.** **Winchester.** Murfreesboro, Shelbyville, and Winchester; *Provided*, That the mayor and aldermen of the towns of Murfreesboro, Shelbyville, and Winchester may issue bonds for their stock, or, in negotiating loans under this act, of a denomination as low as one hundred dollars. (Acts Tenn., 1847-8, ch. 26; passed December 9, 1847.)

**Shelbyville subscription.**—The town of Shelbyville never subscribed for a share of stock in this company. It is true that, on December 8, 1848, the board of mayor and aldermen did make a subscription for the town of \$50,000 of the stock, but, on December 30, 1848, this ordinance was repealed, and nothing more was ever done. Nor did the town subscribe in building the *branch* to Shelbyville.

**Nashville subscription.**—The proposition to subscribe or not was submitted to the people of Nashville, July 3, 1847, and resulted in a vote of three to one in favor of subscribing \$500,000, upon condition that the calls be paid in the bonds of the city not having longer time to run than thirty years. This was done. See city ordinances passed July 9, 1847, and December 23, 1847.

**Murfreesboro subscription.**—The city of Murfreesboro subscribed for \$30,000 of the stock.

**Winchester subscription.**—The town of Winchester never subscribed.

## 8. Charter, sec. 33, construed by act; authority also given in this instance to borrow money and mortgage road.

WHEREAS, The charter of the Nashville & Chattanooga Railroad Company, passed on December 11, 1845, by its thirty-third section provides that the said company shall **Additional powers.** possess such additional powers as may be convenient for the due and successful execution of the powers granted in said charter; and,

WHEREAS, The power to borrow money upon such terms as **Borrow money.** may be prescribed by the stockholders at a general meeting, to be expended for the more thoroughly equipping said road, repairing the roadbed, and for such other purposes as may be deemed expedient by said stockholders, included in the powers granted by said thirty-third section; and,

WHEREAS, It is intended by the following act merely to construe the powers as granted by said charter, and **Construction of power.** not to enlarge or modify the same; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the Nashville & Chattanooga Railroad

Company be, and it is hereby, permitted to borrow <sup>Permitted to borrow</sup> a sum not exceeding three millions of dollars, and **\$3,000,000.** in order to secure the payment of the same, the said company is authorized to make and issue its bonds in sums of one thousand dollars each for the sum aforesaid, payable in not less than five nor more than twenty years from date, in gold or silver coin, with coupons attached for the payment of interest semi-annually, at a rate of interest to be agreed upon, <sup>Rate of interest.</sup> not exceeding the legal rate of interest at the place where payable.

**SEC. 2.** That in order more perfectly to secure the payment of the principal and interest of the bonds to be issued as aforesaid, the said company is hereby <sup>Payment.</sup> permitted to execute a second mortgage on its charter, road, works, rolling stock, and depots, with all the stipulations and conditions necessary to accomplish the <sup>Mortgage.</sup> intent and meaning of this act, and the manner in which said bonds and mortgage shall be made and executed shall be prescribed by the board of directors of said company; that nothing herein contained shall be construed as to interfere with prior liens, especially the lien of the state; and that <sup>Prior liens.</sup> this act shall take effect from and after its passage, the public welfare requiring it. (Acts Tenn., 1870, ch. 14; approved June 13, 1870.)

It is not the province of the legislature to expound the meaning of previously existing laws. They can say what the law shall be, but are not authorized to say what it is. 2 Hum. (Tenn.), 304; 1 Bax. (Tenn.), 319.

The above act does not make the right to mortgage a part of the charter of the company, but was enacted for this occasion only.

## 9. State aid to Nashville & Chattanooga Railroad Company.

Many acts of the legislature of the State of Tennessee were passed authorizing state aid to be granted to the Nashville & Chattanooga Railroad Company for the purpose of building and equipping its road. The state aid was given by having the governor to indorse the bonds of the road on behalf of the state. These acts are quite lengthy, and are so seldom required that for the purpose of economy it is deemed not advisable to insert them in full in this compilation, but simply to refer to



the act and page where they can be found, if desired. Below will be found all acts relating to this subject, set out in the order of their passage:

Acts 1847-8, ch. 169, p. 272, governor authorized to indorse and guarantee bonds of the Nashville & Chattanooga Railroad Company to any amount not exceeding the sum of \$500,000. For terms and conditions, see act.

Acts 1851-2, ch. 151, sec. 18, bonds authorized to be issued to, when twenty-five miles of road completed in addition to eighty miles specified in Acts 1847-8, ch. 169, sec. 2, to the amount of \$175,000, and so on for each section of twenty-five miles. For conditions, see act itself.

Acts 1853-4, ch. 131, sec. 6, governor authorized to indorse and guarantee bonds of Nashville & Chattanooga Railroad Company to amount not exceeding \$650,000. For conditions, see act.

Acts 1855-6, ch. 120, governor authorized to indorse and guarantee \$150,000 of the bonds of the Nashville & Chattanooga Railroad Company.

Acts 1855-6, ch. 120, governor authorized to indorse and guarantee bonds to the amount of \$150,000 to the Nashville & Chattanooga Railroad Company to complete branch to the East Tennessee & Georgia Railroad.

Acts 1855-6, ch. 35, governor authorized to indorse and guarantee bonds of the Nashville & Chattanooga Railroad Company to the amount of \$95,000. For terms and conditions, see act.

Acts 1859-60, ch. 7, state aid to the extent of a sum not exceeding \$150,000 transferred from the Memphis & Charleston Railroad Company to the Nashville & Chattanooga Railroad Company, to be applied exclusively to that part of the road, etc., between Stevenson and Chattanooga. For conditions, see act itself.

Acts 1865-6, ch. 14, p. 23, governor authorized to issue bonds to the amount of \$125,000 to the Nashville & Chattanooga Railroad Company for the completion of the branch road from Bridgeport, Ala., to Jasper, Tenn.

## 10. Internal improvement acts.

The legislature of the State of Tennessee has passed many acts under the terms of which the various railways in the state could secure state aid for the purpose of building and equipping their roads. These acts are very numerous and lengthy, and it is a rare exception when they are now needed. For these reasons it is deemed advisable not to insert them in full in this compilation, but simply to give the acts and pages where they can be found should occasion ever require.

Immediately following will be found all the acts in relation thereto, set out in the order of their passage: Acts 1851-2, ch. 151, passed February 11, 1852; Acts 1851-2, ch. 285, passed February 28, 1853; Acts 1853-4, ch. 131, passed February 8, 1854; Acts 1853-4, ch. 132, passed December 16, 1853; Acts 1853-4, ch. 225, passed February 17, 1854; Acts 1855-6, ch. 82, p. 92, passed January 19, 1856; Acts 1855-6, ch. 228, passed January 30, 1856; Acts 1857-8, ch. 20, passed January 9, 1858; Acts 1859-60, ch. 74; Acts 1865-6, ch. 14, p. 33, passed January 18, 1866; Acts 1865-6, ch. 31, passed February 27, 1866; Acts 1865-6, ch. 9, passed February 23, 1865; Acts 1865-6, ch. 24, passed January 18, 1866; Acts 1865-6, ch. 95, passed January 26, 1866; Acts 1866-7, ch. 2, passed November 19, 1866; Acts 1866-7, ch. 22, passed February, 18, 1867; Acts 1868-9, ch. 19, passed January 26, 1869.

## RESOLUTIONS OF TENNESSEE RELATING TO NASHVILLE & CHATTANOOGA RAILROAD COMPANY.

### 1. Resolution of Tennessee asking Georgia for right of way for Nashville & Chattanooga Railroad Company.

WHEREAS, The general assembly of the State of Tennessee has passed an act incorporating a company to construct a railroad from Nashville to Chattanooga, designed to connect at the latter place with the great line of railroad extending to the Southern Atlantic coast; and,

WHEREAS, From partial reconnoissances and surveys which have been made, the route believed to be the most favorable for the road crosses the southern boundary line of the state, and

for some distance passes through the territory of the State of Georgia; and,

WHEREAS, The construction of the Nashville & Chattanooga Railroad in a great degree depends upon the early completion by Georgia of her state road to the Tennessee River, which would bring that work within the territory and jurisdiction of Tennessee, the right and privilege of doing which has been granted to Georgia by this state; and,

WHEREAS, The accomplishment of both of these great works of internal improvement, believed to be alike beneficial to both states, may, in a great degree, depend upon the reciprocal legislation of the two states, by which the rights and privileges to be enjoyed and exercised by each within the jurisdiction of the other may be placed upon a just and permanent basis; therefore,

*Resolved by the General Assembly of the State of Tennessee,* That the legislature of the State of Georgia be requested to grant to the Nashville & Chattanooga Railroad Company the privilege of surveying, locating, and constructing their road, and of establishing any necessary warehouses, depots, etc., thereon, from a point on the state line in Dade county, near the head of Running Water Creek, thence through the said county of Dade, by John B. Perkins, and down Lookout Valley, recrossing the state line in said valley, with such protection to the rights and property of the company, and under such restrictions, as that legislature may deem expedient to prescribe.

*Resolved,* That James A. Whiteside be appointed an agent to proceed to the Georgia legislature, now in session, to solicit the right of way hereinbefore indicated for the Nashville & Chattanooga Railroad, and confer with the authorities of that state upon the subject of the reciprocal legislation which should be adopted by the two states to make effectual the rights and privileges conferred by them respectively. (Acts Tenn., 1847-8, Resolution No. 2; passed November 29, 1847.)

## **2. Resolutions of Tennessee asking Alabama for the right of way for the Nashville & Chattanooga Railroad.**

WHEREAS, The general assembly of the State of Tennessee has passed an act incorporating a company to construct a rail-



road from Nashville, in Davidson county, to Chattanooga, in Hamilton county; and,

WHEREAS, From partial examination and reconnoissances which have been made, several different routes are presented, supposed to afford facilities for the location of the road, one of which crosses the state line and for a short distance passes through the territory of the State of Alabama, and it being desirable to locate and establish the road upon the route most suitable for its construction, which can only be ascertained by actual survey and estimates; therefore,

*Resolved by the General Assembly of the State of Tennessee,* That the legislature of the State of Alabama be requested to grant to the Nashville & Chattanooga Railroad Company the privilege of surveying, and in case they find that route most eligible, for locating and building their road and any necessary warehouses, depots, water stations, etc., from a point on the state line, in Jackson county, at or near the place where Crow Creek crosses the same, thence down the valley of said creek towards Bolivar, so far as to be able to turn the spur of Cumberland mountain, and recross the state line between said mountain and Tennessee river, with such protection to the rights conferred and such restrictions as that legislature may deem expedient to impose.

*Resolved,* That the governor of this state be requested to transmit a copy of the foregoing preamble and resolutions to the executive of the State of Alabama, with the request that he will submit the same to the legislature of that state for consideration. (Acts Tenn., 1845-6, Resolution No. 5; adopted December 12, 1846.)

### **3. Resolution allowing petition of W. G. Harding, D. H. McGavock, and Lucy McKelvey to be filed, asserting their rights for damages for land taken for right of way on Northwestern Division.**

WHEREAS, W. G. Harding, D. H. McGavock, Mrs. McKelvey, and others have obtained decree in the supreme court of Tennessee, enjoining Nashville, Chattanooga & St. Louis Railroad from using or running trains over certain lands, occu-

pied by the right of way of the Nashville & Northwestern Railroad, sold by the state in the case of the *State v. The Edgefield & Kentucky Railroad Company*, pending in the chancery court at Nashville, to said Nashville, Chattanooga & St. Louis Railway; and,

WHEREAS, The basis of these decrees for injunction was that the lien of said parties for the purchase money of these lands was prior and superior to that of the state, in said land of said railroad companies, and that they not having been made parties to said suit, had no opportunity therein to have adjudicated their right therein to the purchase money paid into court for said Nashville & Northwestern Railroad, and, not being permitted to sue the state, were forced to pursue their remedy by injunction against the Nashville, Chattanooga & St. Louis Railway, as purchasers of said railroad; and,

WHEREAS, It being the intention of the legislature, in passing the various acts directing the bringing of said suit for the purpose of selling of said railroad and other delinquent railroads, that all parties having legal claims against any of the said railroads should be made parties thereto, and have their rights therein adjudicated; now, therefore,

*Be it resolved by the General Assembly of the State of Tennessee*, That the said W. G. Harding, D. H. McGavock & Co., complainants, and Lucy McElvey, or their assigns, may proceed, by petition, in said cause of the *State of Tennessee v. The Edgefield & Kentucky Railroad Co. et al.*, to make themselves parties thereto, making the state a party to said petition by service of notice upon the attorney-general for the state — days before the filing of the same; and the said chancery court shall have full power to make such decree thereon as it might have made had the petitioners been parties to the original bill therein, and the fact of not having been made parties originally to said suit shall in no way affect their rights in the premises, provided nothing in this resolution shall in any way affect the judgments of the parties against the Nashville, Chattanooga & St. Louis Railroad, which have been rendered in the courts heretofore. (Senate Joint Resolution, No. 20, Acts Tenn., 1877, p. 229; approved March 26.)

**4. Resolution authorizing suit against Nashville & Chattanooga Railroad Company for state's interest as stockholder in Nashville, Murfreesboro & Shelbyville Turnpike Company.**

WHEREAS, On July 19, 1848, the Nashville & Chattanooga Railroad Company, compounded, under a directory clause in its charter, with the stockholders of the Nashville, Murfreesboro & Shelbyville Turnpike Company, for damages to its franchise by interfering parallel lines, agreeing to pay as such damage twenty-five per cent., in amount of its capital stock, on the capital stock in said turnpike road, the state's interest as a stockholder being \$66,666.66; and,

WHEREAS, This twenty-five per cent. was promptly paid to the individual stockholders, but has never been paid to the state by said Nashville & Chattanooga Railroad Company; therefore,

*Be it resolved by the General Assembly of the State of Tennessee.* That the secretary of state is hereby ordered and instructed to proceed at once, and use all lawful measures for the collection of the same, and the dividends properly belonging thereto. (House Joint Resolution No. 60, approved March 12, 1875; Acts Tenn., 1875, p. 317.)

**5. Resolution with reference to Nashville, Chattanooga & St. Louis Railway claiming exemption from taxation on Northwestern Division.**

WHEREAS, The comptroller states in his report to the present general assembly, pages 56 and 57, that the Knoxville & Ohio Railroad, the Mobile & Ohio Railroad, the Nashville, Chattanooga & St. Louis Railroad (Northwestern Division) are exempt from taxation; and,

WHEREAS, The said roads have a grand total of three hundred and forty-five miles of railroad, and that the assessed value of said roads amounts to five million sixty-seven thousand three hundred and ninety-five dollars; and,

WHEREAS, The state is in need of all the revenue she can get; therefore,

*Be it resolved by the house of representatives.* That the railroad committee shall inquire whether said companies are ex-



empt from taxation, and, if so, when said exemption expires, and make their report to this house. (House Resolution No. 32, Acts Tenn., 1887.)

## CHANCERY COURT AMENDMENT TO CHARTER.

### Decree amending charter of Nashville & Chattanooga Railroad Company at Nashville, Tenn.

This cause came on to be heard this thirteenth day of May, 1872, before the Hon. E. H. East, chancellor, presiding in the chancery court for the county of Davidson, State of Tennessee, upon the petition of the Nashville & Chattanooga Railroad Company, incorporated by the general assembly of Tennessee, and of its directors, E. W. Cole, Thomas C. Whitesides, Godfrey M. Fogg, John W. Childress, John Frizzell, Jackson Pryor, W. S. Huggins, John F. Anderson, John B. Hawkins, A. E. Patton, Thomas Lipscomb, Edward L. Jordan, V. K. Stevenson, Ben May, John P. King, John M. Bass, Thomas H. Caldwell, and W. Bosson, the last two being the state directors:

When it appeared to the court that, on March 9, 1872, the petition in this cause was filed, and which has been enrolled in book No. 1, page 283, and that, by said petition, the court is asked to pronounce a decree amending the charter of said company as specified in said petition; that, on March 11, 1872, the clerk and master of this court caused publication to be made for thirty days in the *Republican Banner*, a newspaper published in the city of Nashville, Tennessee, which publication was in the words and figures following:

No. 7108.

IN CHANCERY AT NASHVILLE.

STATE OF TENNESSEE.

OFFICE CLERK AND MASTER CHANCERY COURT.

NASHVILLE, March 11, 1872.

WHEREAS, The Nashville & Chattanooga Railroad Company and its directors, viz.: E. W. Cole, Thos. C. Whitesides, G. M. Fogg, John W. Childress, John Frizzell, Jackson Pryor,

W. S. Huggins, John F. Anderson, Jno. B. Hawkins, A. E. Patton, Thos. Lipscomb, Edward L. Jordan, V. K. Stevenson, Ben May, Jno. P. King, Jno. M. Bass, Thos. H. Caldwell, and W. Bosson (the last two being state directors), filed their petition in the chancery court at Nashville, on the ninth of March, 1872, praying that the charter of said Nashville & Chattanooga Railroad be amended by said court; that a decree be pronounced granting said amendments, which are as follows:

**1. May lease or purchase other railways and issue bonds.**

That the board of directors of said company, two-thirds of the whole number of directors agreeing thereto, shall have the power and authority to acquire for said company by purchase or lease, the property and franchises of any railroad, as well as the property and franchises of any other railroad company operating or proposing to construct a railroad which connects with the Nashville & Chattanooga Railroad, as well as the property and franchises of any other railroad company, the purchase or lease of which may, in the opinion of the board of directors, promote the interest of the Nashville & Chattanooga Railroad Company, and said board of directors may cause to be issued the bond of the said Nashville & Chattanooga Railroad Company to the amount necessary, from time to time, to accomplish.

For validity of this amendment, as well as those following in this decree, see discussion herein as to chancery court amendments; refer to index.

**2. May subscribe to stock in any incorporated company and issue bonds.**

That the board of directors of said company, two-thirds of the whole number of directors agreeing thereto, may, for and on behalf of said company, subscribe to the capital stock of any other incorporated company to such an amount as may be agreed upon by said board of directors, and may cause to be issued the bonds of said company to the amount necessary, from time to time, to accomplish this purpose.

**3. May indorse or guarantee bonds of other companies.**

That the board of directors of said company, two-thirds of the whole number of said directors agreeing thereto, may, for

and on behalf of said company, and to be indorsed and guaranteed, the bonds issued by the other incorporated companies, to such an amount as may be agreed upon by said board of directors, whenever it may be, in the opinion of the board of directors, to promote the interest of said Nashville & Chattanooga Railroad Company.

#### **4. May increase capital, how.**

That the board of directors of said railroad company, two-thirds of the whole number agreeing thereto, may increase the capital stock of said company to such an amount as may be determined by said board of directors.

#### **5. Manner of voting; amending section 20 of original charter.**

That stockholders may vote in person or by proxy, and in the election of directors, and in voting on all questions which may come before a meeting of the stockholders, if so demanded by five stockholders, the vote shall be taken according to the following scale: The owner of one or more shares, up to and including four, shall be entitled to one vote for each share; the owner of a greater number of shares than four shall be entitled to one vote for each four shares over and above four.

That the provisions of the said act of December 11, 1845, ch. 1, inconsistent with these proposed alterations and amendments be abrogated.

It is therefore ordered that all persons who desire to resist the granting of said amendments to said charter, as above indicated, or to the prayer of said petition, do enter their appearance herein on or before the third Monday of the next term of said court, to be held on the first Monday in April next, 1872, and then and there show cause, if any they have, or can, why the prayer of said petition should not be granted and said charter amended, and that a copy of this order be published for thirty days in the Nashville *Republican Banner*.

A copy—attest:

NATHANIEL BAXTER, JR.,

*Clerk and Master.*

FOGG, WHITESIDES & FRIZZELL,

*Solicitors for Petitioner.*



It also appearing to the court that by an act of the general assembly of the State of Tennessee, ch. 1, December 11, 1845, entitled, "An act to incorporate the Nashville & Chattanooga Railroad Company," and the acts amendatory thereof, to wit: Ch. 70, passed January 21, 1848, entitled, "An act to amend the charter of the Nashville & Chattanooga Railroad Company," and ch. 266, passed January 19, 1850, entitled, "An act to amend the charter of the Nashville & Chattanooga Railroad Company," the said Nashville & Chattanooga Railroad Company was incorporated for the purpose of establishing a communication by railroad between Nashville & Chattanooga, in the State of Tennessee; that by said acts of assembly there were conferred upon said company the powers and privileges incident and necessary to the transaction of the business for which it was incorporated; that under the authority aforesaid said company has constructed and is now operating a railroad from Nashville to Chattanooga, its principal office being at Nashville; that the persons named as directors in said petition constitute the president and directors of said company; that in pursuance of the provisions of sec. 34 of said act of December 11, 1845, the said president and directors unanimously petition that the charter of said company may be amended in the manner mentioned in the petition filed in this cause. It also appeared that no person appeared to show cause why the prayer of said petition should not be granted.

The court being satisfied that the prayer of said petition is legitimate and proper, and deeming the same necessary and not inconsistent with the statutory provisions on this subject, nor the general laws of the state, nor hurtful to the public good, doth order, adjudge, and decree, in pursuance of the powers vested in courts of chancery by virtue of paragraph 23, sec. 15, of the acts of the general assembly of Tennessee, ch. 54, approved January 30, 1871, entitled "An act to authorize the chancery courts in this state to grant letters of incorporation," that the acts of the general assembly aforesaid incorporating the Nashville & Chattanooga Railroad Company, passed December 11, 1845, be altered, amended, and changed in the

manner following, as prayed for in the petition in this cause—that is to say:

1. That the board of directors of said company, two-thirds of the whole number of said directors agreeing thereto, shall have the power and authority to acquire of said company, by purchase or lease, the property and franchises of any railroad company operating or proposing to construct a railroad which connects with the Nashville & Chattanooga Railroad, as well as the property and franchises of any other railroad company, the purchase or lease of which may, in the opinion of the board of directors, promote the interest of the Nashville & Chattanooga Railroad Company, and said board of directors may cause to be issued the bonds of the said Nashville & Chattanooga Railroad Company to the amount necessary, from time to time, to accomplish this purpose.

2. That the board of directors of said company, two-thirds of the whole number of directors agreeing thereto, may, for and on behalf of said company, subscribe to the capital stock of any other incorporated company, to such an amount as may be agreed upon by said board of directors, and may cause to be issued the bonds of said company to the amount necessary, from time to time, to accomplish this purpose.

3. That the board of directors of said company, two-thirds of the whole number of directors agreeing thereto, may, for and on behalf of said company, cause to be indorsed and guaranteed the bonds issued by other incorporated companies to such an amount as may be agreed upon by said board of directors whenever it may, in the opinion of the board of directors, promote the interest of the Nashville & Chattanooga Railroad Company.

4. That the board of directors of said company, two-thirds of the whole number of directors agreeing thereto, may increase the capital stock of said company to such an amount as may be determined by said board of directors.

5. The stockholders may vote in person or by proxy, and in the election of directors, and in voting on all questions which may come before a meeting of the stockholders, the vote shall

be taken according to the following scale: The owner of one or more shares, up to and including four, shall be entitled to one vote for each share; the owner of a greater number of shares than four shall be entitled to one vote for each four shares over and above four.

It is further ordered that the Nashville & Chattanooga Railroad Company pay the costs of this proceeding, for which execution may issue, and upon the payment of the same the clerk and master will issue a certified copy of this decree for registration. (Entered in minute book "V," pp. 174-178, at Nashville, Tenn.)

For discussion of the validity of this decree, see herein. Refer to index.

**Other decrees.**—There are several other decrees in this compilation, but as they simply *rest title* to particular roads in this company they are inserted in the chapter relating to those roads or branches.

## **ACTS OF ALABAMA RELATING TO NASHVILLE & CHATTANOOGA RAILROAD COMPANY.**

### **1. Alabama grants right of way to Nashville & Chattanooga Railroad Company through Jackson county, with rights and privileges of Tennessee charter; how to be taxed.**

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the Nashville & Chattanooga Railroad Company be, and they are hereby, authorized to construct their road through the northern portion of Jackson county, in this state, and that they shall have and enjoy all the rights, privileges, and immunities, and be subject to such restrictions, as are granted to and imposed upon said company by the act incorporating the same, as far as said railroad lies in the county of Jackson; on the express condition, however, that any railroad company now chartered, or which may hereafter be chartered in this state, shall have the right to connect their road directly with the said Nashville & Chattanooga Railroad at any point on it in the county of Jackson, aforesaid.

Authority to  
construct rail-  
road in Jack-  
son county.

Condition.



SEC. 2. [This section related to the erection of the bridge across the Tennessee River, and as it is inserted in another place as a note to Acts Ala., 1855-6, p. 11, following, allowing the bridge to be erected, it is here omitted.]

SEC. 3. *And be it further enacted*, That nothing contained in this act shall prevent the State of Alabama from levying and collecting such rate of tax on the property of said company within this state, after the completion of their road, as shall, by the general assembly at the time, be assessed on the property of other railroad companies in this state; *Provided*, That, in assessing any tax, the value of that part of the road or other property of the company lying in this state shall not be estimated at more than the amount of the capital stock of the company invested in their purchase and construction, to be ascertained by the statement, on oath, of the president or engineer of the company, nor shall any tax whatsoever be levied on the bridge across Tennessee river, provided the same is not used for purposes of common travel, but only for the accommodation of the railroad. (Acts Ala., 1849-50, No. 123; approved January 21, 1850.)

How as-  
sessed.

This act was amended by Acts Ala., 1859-60, No. 216, so as to allow the company to build a branch road from a point on its line at or near Bridgeport, in Jackson county, to the Tennessee state line, in a direction to Jasper, with all the rights, powers, and privileges of the main line. See act itself further on.

## 2. Resolution of Alabama in regard to right of way of Nashville & Chattanooga Railroad through Jackson county.

*Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That the Chattanooga Railroad Company be, and they are hereby, authorized to construct their road through the northern portion of Jackson county, in this state, subject to such rules, regulations, and restrictions, in regard to the interest and claim of our citizens, as are now imposed by law upon the Montgomery & West Point Railroad Company. (Acts Ala., 1845-6; approved February 4, 1846.)

This resolution was never acted upon, and the legislature of Alabama subsequently passed another and more liberal act, which was accepted, and the road built under its provisions. See Acts Ala., 1849-50, No. 123, approved January 21, 1850, herein, for provisions.

### 3. Bridge over Tennessee River allowed to be constructed by Alabama legislature, how.

WHEREAS, A considerable portion of the bridge authorized by the act aforesaid has recently been destroyed by fire; and,

WHEREAS, The said railroad company, in erecting their bridge, constructed a drawbridge, which remains in the portion not consumed by the recent burning; therefore,

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened,* That the aforesaid act be so amended that the said Nashville & Chattanooga Railroad Company shall not be required to build any part of their bridge thirty feet, or at any other particular elevation, above extreme high water mark; *Provided,* They keep and maintain a good draw or revolving bridge opening to a width sufficient to allow the free passage of steamboats and other water crafts, and so as, when open, to leave a clear space between the piers, at the draw, of at least sixty feet. (Acts Alabama, 1855-56, p. 11; approved January 17, 1856.)

Previous to this time, the legislature had passed an act requiring the bridge to be constructed at least *thirty* feet above extreme high water, between the two piers next to the west bank, or any two piers the company might deem best; the space between the piers so selected, however, not to be less than one hundred and fifty feet. (Acts Alabama, 1849-50, No. 123, sec. 2; approved January 21, 1850.)

Recently, however, the legislature of Alabama has passed another act, again requiring the bridge to be built at least *thirty* feet above extreme high water, between the two piers next to the west bank, or any two piers that the company may deem best, and that the space between the two piers so selected shall be at least one hundred and fifty feet. (Acts Alabama, 1888-89, p. 443; approved February 19, 1889.) This act, however, is inoperative and void, as against the *vested* rights of the company. In addition, it is inoperative, as congress, by acts 1888 and 1890, has taken charge of bridges over navigable streams. See discussion in notes to sec. 22 of charter.

### 4. Jasper branch, from Bridgeport to state line, authorized to be constructed in Alabama with rights, powers, and privileges of main line.

SECTION 1. That the act granting the right of way to the Nashville & Chattanooga Railroad Company through Jackson county, and the privilege of constructing a bridge across Tennessee River, in said county (approved January 21, 1850), be

so amended that the Nashville & Chattanooga Railroad Company shall have the right to construct and operate a branch of their road from a point on the line of their road at or near Bridgeport, in Jackson county, to the Tennessee state line, in a direction to Jasper, Tenn., with all the rights, powers, and privileges pertaining to the main line, and subject to the same liabilities and restrictions. (Acts Ala., 1859-60, No. 216.)

## 5. Ponds along right of way in Alabama required to be drained.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the Nashville & Chattanooga Railroad Company are hereby required to drain all the ponds on either side of said road, so far as said road is embraced in the limits of the State of Alabama, that have been, or may hereafter be, created by the construction of road.

SEC. 2. *Be it further enacted,* That the said railroad company are hereby allowed one year from the approval of this act to comply with the provisions of sec. 1.

SEC. 3. *Be it further enacted,* That for every failure of said railroad company to remove or drain any pond along the line of the same, it shall be liable to a suit for damages at the instance of any person who is or may be damaged by such failure, and that where the damage claimed is less than fifty dollars the suit may be instituted before any justice of the peace within the beat where said pond is or may be located; and that where the damages claimed exceed fifty dollars, suit therefor may be instituted in the circuit court where the cause of said damage has or may originate.

SEC. 4. *Be it further enacted,* That the rules, regulations, and law of said justices and circuit court, as applicable to other suits, shall apply to suits instituted under the provisions of this act, unless they conflict with some of its provisions. (Acts Ala., 1859-60, p. 291; approved December 9, 1859.)



**6. Right of way of Nashville & Chattanooga Railroad Company through Jackson county, Alabama, again provided for, as well as Huntsville & Elora Railroad; how Nashville & Chattanooga Road taxed.**

SECTION 1. *Be it enacted by the General Assembly of Alabama*, That an act entitled "An act granting the right of way to the Nashville & Chattanooga Railroad Company through Jackson county, and the privilege of constructing a bridge across the Tennessee river in said county, approved January 21, 1850, be, and the same is hereby, amended so as to read as follows:

SECTION 1. That the Nashville & Chattanooga Railroad Company be, and they are hereby, authorized to construct their road through the northern portion of Jackson county, in this state, and that they shall have and enjoy all the rights, privileges, and immunities, and be subject to such restrictions, as are granted to and imposed upon said company by the act incorporating the same, as far as said railroad lies in the county of Jackson, on the express condition, however, that any railroad company now chartered, or which may hereafter be chartered, in this state, shall have the right to connect their road directly with the said Nashville & Chattanooga Railroad at any point on it in the county of Jackson aforesaid.

SEC. 2. *And be it further enacted*, That said company shall have the privilege of constructing a bridge for their road across the Tennessee river; and, for the purpose of avoiding any interference with its navigation, it shall be the duty of the company to build the bridge at least thirty feet above extreme high water, between the two piers next to the west bank, or any two piers that the company may deem best, and the space between the two piers so selected shall be at least one hundred and fifty feet, so as to afford free and safe passage for boats of all sizes.

SEC. 3. *And be it further enacted*, That nothing contained in this act shall prevent the State of Alabama from levying and collecting such rate of tax on the property of said company within this state, after the completion of

Amending act  
of 1850.

Other roads  
may connect  
with.

Bridge across  
the Tennes-  
see river.

Tax on prop-  
erty of road.

their road, as shall by the general assembly at the time be assessed on the property of other railroad companies in this state; *Provided*, That in assessing any tax the value of that part of the road or other property of the company lying in this state shall not be estimated at more than the amount of the capital stock of the company invested in their purchase and construction, to be ascertained by the statement, on oath, of the president or engineers of the company; nor shall any tax whatsoever be levied on the bridge across the Tennessee River, provided the same is not used for purposes of common travel, but only for the accommodation of the railroad.

SEC. 4. WHEREAS, The Nashville, Chattanooga & St. Louis Railway, formerly the Nashville & Chattanooga Railroad Company, has constructed a road from Elora, in the State of Tennessee, to Huntsville, in the county of Madison, State of Alabama; therefore,

Rights in Madison county.

*Be it further enacted by the General Assembly of Alabama*, That said Nashville, Chattanooga & St. Louis Railway shall have and enjoy all the rights, privileges, and immunities granted in sec. 1 of this act, so far as said Nashville, Chattanooga & St. Louis Railway lies within the county of Madison. (Acts Ala., 1888-9, p. 443; approved February 19, 1889.)

Sec. 2 of this act is void as against the vested rights of the company. In addition, it is inoperative, as congress now has charge of navigable streams, under Acts 1888-1890. See sec. 22 of charter of Nashville & Chattanooga Railroad Company, herein.

## **7. Nashville, Chattanooga & St. Louis Railway allowed to build road or branch through counties of Madison, Marshall, and Etowah, to Attalla or Gadsden, Ala., with rights, privileges, etc., of Tennessee charter.**

SECTION 1. *Be it enacted by the General Assembly of Alabama*, That the Nashville, Chattanooga & St. Louis Railway, a corporation chartered under the laws of the State of Tennessee, be, and the same is hereby, authorized and empowered to construct, operate, and maintain its road, or a branch thereof, in and through the counties of Madison, Marshall, and Etowah, in the State of Alabama, beginning at Huntsville, in Madison county, and extending thence through the counties of Madison,

Marshall, and Etowah, to Attalla or Gadsden in said Etowah county.

SEC. 2. *Be it further enacted*, That the said Nashville, Chattanooga & St. Louis Railway shall have and enjoy all the rights, privileges, and immunities not in conflict with the constitution of the State of Alabama, and be subject to such restrictions as are granted to and imposed upon said Nashville, Chattanooga & St. Louis Railway by the act or acts chartering the same, so far as said railway lies in the counties of Madison, Marshall, and Etowah, or may hereafter be constructed therein. (Acts Ala., 1890-91, p. 154; approved December 10, 1890.)

## ACTS OF GEORGIA RELATING TO THE NASHVILLE & CHATTANOOGA RAILROAD COMPANY.

### 1. Georgia grants right of way to Nashville & Chattanooga Railroad Company through Dade county, with rights, privileges, etc., of original charter and of Hiwassee Railroad Company.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Georgia, in General Assembly met, and it is hereby enacted by authority of the same*, That the Nashville & Chattanooga Railroad Company shall be allowed the privilege of making every necessary reconnoissance and survey for the purpose of ascertaining the most Leave to survey. eligible route of said contemplated railroad from Nashville to Chattanooga, which may be in the county of Dade and State of Georgia.

SEC. 2. *And be it enacted by the authority aforesaid*, That, as soon as said route through the county of Dade is ascertained, the "Nashville & Chattanooga Railroad Company," chartered by the legislature of Tennessee, shall be allowed Right of way. the right of way for the extension and construction of said railroad through the county of Dade, and that said company shall be entitled to all the privileges, rights, and immunities, and be subject to the same restrictions, as far as they



**Other rights, etc.** are applicable, as are granted, made, and prescribed for the benefit, government, and direction of the Hiwassee Railroad Company, by an act of the legislature of Tennessee incorporating said Hiwassee Railroad Company.

**SEC. 3.** *And be it further enacted by the authority aforesaid,* That the Nashville & Chattanooga Railroad Company shall have and enjoy all the rights, privileges, and immunities, **Same.** and be subject to the same restrictions as are granted to and imposed upon said company by the act of the general assembly of Tennessee incorporating the same, so far as said railroad lies in the county of Dade; *Provided,* That any additional rights and privileges hereafter conferred upon **Proviso.** this road by the legislature of Tennessee shall be conferred upon the Western & Atlantic Railroad, of the State of Georgia, by the legislature of Tennessee. (Acts Ga., 1847-8, p. 172; approved December 29, 1847.)

1. It will be noticed that by sec. 3 of the above act, all the rights, privileges, immunities, etc., of the original Nashville & Chattanooga Railroad Company's charter was conferred upon the company, by the State of Georgia, through Dade county, provided that any additional rights and privileges thereafter conferred upon the company should also be conferred upon the Western & Atlantic Railroad. This was virtually done by Acts Tenn., 1847-8, ch. 195, p. 330, which provided: "That all the rights, privileges, and immunities, with the same restrictions which are given and granted to the Nashville & Chattanooga Railroad Company by the acts of the general assembly of this state incorporating said company, so far as they are applicable, are hereby given to and conferred upon the State of Georgia in the construction of that part of the Western & Atlantic Railroad lying in Hamilton county, Tenn."

See charter of Nashville & Chattanooga Railroad in ch. 1 herein. See also resolutions in regard to Western & Atlantic Railroad; refer to index.

2. It will also be noticed that the above act of Georgia, in addition, confers upon the Nashville & Chattanooga Railroad Company all the privileges, rights, immunities, etc., of the *Hiwassee* Railroad Company. (See Hiwassee charter, below.) This company was chartered by the Acts of Tenn., 1835-6, p. 23, and is contained in a very rare volume entitled "Local Acts of Tennessee" of that session. This book will hardly be found in any of the libraries of the state, save at the state capitol. It was discovered there by accident.

The charter of the Hiwassee Railroad Company is set out below in order that the full rights, powers, etc., of the Nashville, Chattanooga & St. Louis Railway in Georgia may be known, as it, together with the charter of the Nashville & Chattanooga Railroad Company, jointly determined the matter:

**Charter of Hiwassee Railroad Company.**

[Acts Tenn. (local), 1835-6, p. 23.]

**SECTION 1. Commissioners, name, general powers, route.—**

*Be it enacted by the General Assembly of the State of Tennessee,*  
 That William Park, Solomon D. Jacobs, Ebenezer Alexander, William B. A. Ramsay, Drury P. Armstrong, of Knoxville; Henry Liggett, William S. McEwen, — Hamilton, Joseph Bird, of Kingston; Fidelio S. Hunt, Hugh Graham, James Dickinson, Joseph Jones, William Houston, of Tazewell; Nicholas Fain, William B. Mitchell, and Clinton Armstrong, of Rogersville; William Dickson, George Jones, and Valentine Sevier, of Greeneville; John Blair, Seth J. W. Lucky, and John G. Eason, of Jonesboro; Robert H. Hynds, John Roper, William Moore, and Joseph Hamilton, Jr., of Dandridge; Micajah C. Rogers, James P. H. Porter, John Cannon, of Sevierville; William Wallace, John Sample, J. H. Gillespie, William A. Spencer, of Maryville; James A. Coffin, James Greenway, Samuel Bicknell, William M. Stakeey, and Guilford Cannon, of Madisonville; Matthew Nelson, Jacob Pearson, Robert Cleveland, Hugh Smith, and William Montgomery, of Philadelphia; Solomon S. Bogart, Onslow G. Murrell, John W. M. Brazeale, John Crawford, and Thomas Crutchfield, of Athens; John L. McCarty, Archibald K. Turk, Ezekiel Bates, of Calhoun; John White, Hamilton Bradford, Henry Bradford, of Columbus; John Loeke, Richard Waterhouse, Thomas McCally, Robert N. Gillespie, of Washington; Samuel L. Story, John Bridgeman, and Samuel Robertson, of Pikeville; John Kelly, James Francis, and William Rice, of Jasper; Madison Rawlings, William S. Smith, and Samuel Igone, of Dallas; William Grant, William McMillin, and Henry Price, of Bradley county, be, and are hereby, appointed commissioners, under the direction of a majority of whom subscriptions may be received to the capital stock of the Hiwassee Railroad Company, hereby incorporated; which Name.  
 commissioners, together with such other persons as now are or may hereafter become associated with them, their successors and assigns, shall constitute a body corporate, and they are hereby

incorporated under the name aforesaid, and in that name they shall have perpetual succession, may sue and be sued, plead and be impleaded, and shall possess and enjoy all the rights, priv-

**General  
powers.**

ileges, and immunities, with power to make such by-laws, ordinances, rules, and regulations not inconsistent with the laws of this state and the United States, as shall be necessary to the well-ordering and conducting the affairs of said company, and may, by their by-laws, declare vacant the place of any director for nonattendance or neglect of duty; and the said company shall be capable in law of purchasing, accepting, selling, leasing, and conveying estates—real, personal, and mixed—to the end and for the purpose of facil-

**Route.**

itating the intercourse and transportation from Knoxville, East Tennessee, through the Hiwassee district, to a point on the southern boundary of Tennessee, to be designated by the commissioners hereinafter mentioned as the most practicable route to intersect the contemplated railroad from Augusta to Memphis.

1. The name of the company was subsequently changed by Acts Tenn., 1847-8. ch. 169. p. 272, sec. 3, to the East Tennessee & Georgia Railroad Company.

2. See Resolution No. 6, Acts Tenn., 1851-2, p. 706, which requests Georgia to protect the interests of this road, and keep the compact entered into between the two states in regard to this road and the Western & Atlantic Railroad. The resolution may also be found herein among the acts of Tennessee relating to the Western & Atlantic.

**SEC. 2. Capital, value of shares, incorporation.**—*Be it enacted*, That the capital stock of said company shall be six hundred thousand dollars, in shares of one hundred each, which shares may be subscribed for by corporations or individuals; but, so soon as four thousand shares are subscribed, the subscription shall be binding, and the corporate powers of said company, as herein granted, shall commence, and have as full operation as if the whole of the shares composing the capital stock were subscribed.

**SEC. 3. Reduction of shares, when and how.**—*Be it enacted*, That, if more than six thousand shares shall be subscribed to the capital stock, the commissioners, or a majority of them, shall reduce the subscription to six thousand shares by striking



off from the highest subscription in succession in such manner that no subscription shall be reduced while one remains larger, estimating by shares instead of dollars, and if there shall be an excess, then lots shall be drawn by the commissioners to determine who are excluded.

**SEC. 4. Payments, when and how made; forfeiture.**—*Be it enacted*, That there shall be paid on each share subscribed, but not until four thousand shares shall have been subscribed, such sum as the president and directors hereinafter named, or a majority of them, may direct, and in such installments, not exceeding one-fourth of the subscriptions in any one year; *Provided*, No payment shall be demanded until at least thirty days' notice shall have been given by the said president and directors in the newspapers printed in the towns of Knoxville and Athens, of the time and place of payment; and, if any subscriber shall fail or neglect to pay any installment or part of said subscription thus demanded for thirty days next after the time it fell due, the stock on which it was demanded, together with the amount paid in, may, by the president and directors, or a majority of them, be declared forfeited, and, after due notice, shall be sold at auction, for the benefit of the company, or they may waive the forfeiture after thirty days' default, and sue the stockholders for the installments due, at their discretion.

**SEC. 5. Subscriptions void, when.**—*Be it enacted*, That, if the subscription of four thousand shares, herein made necessary for the incorporation of said company, shall not be obtained by the first day of January, 1838, the same, and all subscriptions under it, shall be null and void upon the stockholders paying to the commissioners a sum not exceeding one dollar on each share, to defray the expenses of opening the books.

**SEC. 6. Books opened, election of directors, qualification, scale of voting.**—*Be it enacted*, That, on the fourth day of July, 1836, the said commissioners shall cause books for the subscription of stock to be opened in the towns of Knoxville, Tazewell, Rogersville, Jonesboro, Greeneville, Dandridge, Sevierville, Maryville, Madisonville, Columbus, Philadelphia, Athens, Calhoun, Washington, Dallas, Jasper, Pikeville, and

Kingston, and at such other places as they may deem advisable, which shall continue open for the space of ten days, or until four thousand shares of the capital stock shall have been subscribed; and, as soon as it is ascertained that four thousand shares are subscribed, the said commissioners, or a majority of them, shall give notice, by advertisement in the newspapers aforementioned, at least thirty days previous, of the time and place, that an election will be held for the election of nine directors to manage the affairs of said company; and, at such time and place, each stockholder may attend in person, or vote by proxy for the directors aforesaid, giving one vote for each share of which he may be the owner, in that and all succeeding elections; and the directors thus elected shall elect one of their body president of the board, who shall, together with the other directors, continue in office until the first Monday in January ensuing, and until their successors are elected and duly qualified. Any three of the commissioners may act as judges of the first election, and none but a stockholder shall be eligible as a president or director.

**SEC. 7. Elections of, and number and power of directors; president.**—*Be it enacted*, That, to continue the succession of the president and directors of said company, nine directors shall be chosen annually on the first Monday in January, at such place as the board may designate by the stockholders; and the directors shall have power to appoint judges of elections. The president of the board shall be elected within three days after the board is organized. If any vacancy shall occur by death, resignation, or otherwise, the vacancy shall be filled by the board, and the persons thus appointed shall hold their office until the next annual election. All elections required to be made at a particular time and place, if not then and there made, may be made at any other time or place by giving the usual notice of thirty days, and the old officers shall continue to exercise their functions until their successors are duly elected and qualified.

**SEC. 8. Stockholders' meetings, removal of officers, etc.**—*Be it enacted*, That a general meeting of the stockholders shall be

held annually at the time and place appointed for the election of president and directors, at which time and place it shall be the duty of the president and directors in office to exhibit a clear and detailed statement of the affairs of the company, and at such meetings a majority of the whole votes upon the stock shall be required to remove an officer, or to reverse decrees or acts of the directory.

**SEC. 9. Oath of officers.**—*Be it enacted*, That every officer of said company shall, previous to entering upon the duties of his office, take an oath or affirmation faithfully to discharge his duty according to the provisions of this act.

**SEC. 10. Books reopened, when.**—*Be it enacted*, That if any of the six thousand shares shall remain unsubscribed for after the organization of said company, the board of directors shall have power to open the books for the sale of the balance of the stock, upon giving thirty days' notice of the time and place, and the subscribers of such stock shall have all the rights and privileges, and be subject to the same regulations of the original shareholders.

**SEC. 11. Powers of president and directors.**—*Be it enacted*, That said president and directors shall have power to appoint a cashier and all such officers, engineers, agents, or servants whatsoever deemed necessary for the transaction of the business of the company, and may remove any of them at pleasure; may fix the salary or compensation of such cashier, engineers, officers or servants in the employ of said company, and to determine by their by-laws the manner of adjusting and settling all accounts against the company, and also the manner, effect, and evidence of transfer of stock in said company.

**SEC. 12. Capital stock increased, how.**—*Be it enacted*, That if the capital stock of said company shall be found insufficient for the purposes of this act of incorporation, it shall and may be lawful for the president and directors, or a majority of them, from time to time, to increase said capital stock by an addition of shares to any amount, so that the whole capital shall not exceed one million five hundred thousand dollars, for which they may cause subscriptions to be received, giving notice in the



manner hereinbefore prescribed, the purchasers of which shall stand in the same relation to the company as the original stockholders.

**SEC. 13. Additional powers of directors, width of right of way, etc.**—*Be it enacted*, That the president and directors of said company shall be, and they are hereby, vested with all the powers and rights necessary for the building, constructing, and keeping in repair of a railroad from Knoxville, East Tennessee, through the Hiwassee district, to a point on the southern boundary of Tennessee, on the nearest, best, and most practicable route. The said road shall have as many tracks as may be deemed necessary by the board of directors, but shall not be more than two hundred feet wide, to which width the company may purchase and cause the same to be condemned for the use of said road, or any less breadth, at the discretion of the directory; and they may cause to be made, or contract with others for making of, said road or any part thereof; and they or their agents, or those with whom they may contract for making any part of said road, or their agents, may enter upon, use, and excavate any land which may be laid out for the site of said road, or the erection of warehouses, engine arbors, reservoirs, booths, stables, officers' and mechanics' shops, or other works necessary or useful in the construction and repair thereof or its works. They may fix scales and weights, build bridges, lay rails, make embankments and excavations, and may use any earth, ground, rock, timber, or other material which may be wanted for the construction and repair of any part of said road, and may construct and acquire all necessary steam engines, cars, wagons, and carriages for transportation on said road by horse or steam power, and all necessary apparatus appertaining to the same.

**SEC. 14. Right of way, how acquired; damages.**—*Be it enacted*, That, whenever it shall become necessary, after said road is laid out, to subject the land of individuals, over which said road is laid out, to the use of said company, and, if the right of soil of the owner cannot be had by gift or purchase, it shall be lawful for the president and directors, their agents, con-

tractors, laborers, and servants, to enter upon such lands and proceed in the opening and constructing said railroad through the same. The pendency of any proceeding in court, or before arbitrators, assessors, or valuers, to estimate the damages that will be sustained by the owner or proprietor of said land by reason of opening said road, shall in no manner hinder or delay the progress of said work, and no order shall be made, nor shall any injunction or supersedeas be awarded by any judge or court to hinder or delay the progress of said work, the true intent of this act being that all injury that may be done to any land, without the consent of owners or proprietors thereof, by opening and constructing the railroad through the same, over and above the advantages of the road to the owners or proprietors of the lands, shall be fully and completely compensated for in damages, when ascertained, so that a work of great public utility may not be delayed by lawsuits.

See Resolution No. 6, passed November 10, 1851, by legislature of Tennessee, requesting the State of Georgia to protect interest of this company, and keep compact entered into between the two states in regard to this road and the Western & Atlantic Railroad. (Acts Tenn., 1851-2, p. 706.) The resolution may be found herein among acts of Tennessee relating to the Western & Atlantic Railroad.

**SEC. 15. Same, condemnation for.**—*Be it enacted*, That the president and directors of said company, their officers, servants, and agents, shall have full power and authority to enter upon all lands and tenements through which they may judge it necessary to make said road, and lay out the same according to their pleasure, so that neither the dwelling house, yard, garden, curtilage be invaded without consent of the owner or proprietor thereof; and if the company cannot agree as to the value of the land, and the owner will not convey it in fee, either party may apply to the circuit court of the county where the said land lies, by giving five days' notice if the owner of the land resides in the county, and twenty days' notice if he resides in any other county in this state, and by advertising in some newspaper printed in Knoxville, Athens, or Madisonville, if he resides out of the state, or be a body corporate, to appoint commissioners to assess the value and condemn the land for the use of said road; and the court shall appoint five disinterested

freeholders of said county, and who shall be sworn or affirmed justly and impartially to value the lands, who shall ascertain what damage the owner will sustain, if any, by the location of said road over his land, always taking into consideration the benefit the road may be of to the owner, and the tendency said road will have to enhance the value of the land; and said five freeholders, any three of whom concurring, shall report to said court as soon as practicable the damages, if any, and if none are sustained they shall report the fact; which report, if unexcepted to, shall be recorded, and if any damages are assessed, the money shall be paid into court by the company. The fee simple of land, so valued as aforesaid, shall vest in said company; and the description of the land and the report of the commissioners, shall be made a matter of record, and, when registered, shall have the effect of a deed of conveyance in fee simple to the company; *Provided, however,* That when infants or persons *non compos* are owners of the land, the guardian shall be notified of said proceedings in court, and if there be no regular guardian, said court shall appoint some person well qualified to defend and protect the interest of such infant or nonsane person.

SEC. 16. **Same, materials to keep in repair, how taken.**—*Be it enacted,* That the president and directors, for the purpose of making said road or repairing the same after it shall have been made, shall be at liberty, by themselves or agents, to enter upon any adjacent land, and cut, quarry, dig, take and carry away therefrom any timber, stone, gravel, or earth which may be necessary; *Provided,* They shall not, without the consent of the owner, cut down any fruit tree or trees preserved in any inclosure for shade or ornament, or take away any materials constituting any part of a fence or building. For all which materials under the authority of this act, and for all incidental injuries done to ground, wood, inclosure, or crops, in carrying them away, the said company shall make to the owner a reasonable compensation; and if the parties cannot agree upon the price it shall be ascertained by three impartial freeholders, to be appointed by a justice of the peace at the application of



either party, the opposite party having three days' notice of the application to the justice. The three freeholders shall be sworn to do impartial justice between the parties. Their award shall be returned to the justice, and shall stand as an award made by order of court upon the rights of the parties, upon which the justice may enter judgment and issue execution if within his jurisdiction; if over, he shall certify the proceedings, as in other cases, to the next court, to be proceeded upon as an award made by order of said court; *Provided*, Either party may have the proceedings corrected by certiorari, and not by appeal; if the proceedings be quashed, the court may appoint other valuers, and cause justice to be done as contemplated before and by order of the court, quashing said proceedings.

**SEC. 17. Right of way through state lands.**—*Be it enacted*, That should said railroad pass over vacant and unappropriated lands, said company shall have the exclusive right of entering the land over which said road may be laid out, not exceeding two hundred feet in breadth, until the first day of January, 1839, and the entry taker of the district or county through which said road may be laid out shall not receive any entry within that period for the benefit of any other person or persons than said company, under the penalty of five thousand dollars, to be recovered by action of debt in any court having cognizance thereof, at the suit of said corporation; *Provided*, Said company shall notify the entry taker of the different counties through which said road may pass, of the route thereof.

**SEC. 18. Lands for warehouses, booths, reservoirs, etc., how acquired.**—*Be it enacted*, That said railroad company shall have power to acquire and own, as common stock of said company, lands near and connected with said road, on which to erect warehouses, booths, arbors, stables, reservoirs, etc., for the purpose of constructing said road and keeping it in repair, and for the convenience of transportation and places of deposit, which improvements they are hereby authorized to construct. If the company cannot agree with the owners of the land necessary for the above purposes, they may have it condemned in the same manner as the land over which the road is laid out

may be condemned by the fifteenth section of this act; *Provided*, That not more than five acres shall be taken at any one place except by agreement with the owners.

SEC. 19. **Capital stock and road, personal property.**—*Be it enacted*, That the whole stock and property of said company, real, personal, and mixed, and the issues, profits, and proceeds thereof, shall be holden in law, and are hereby declared, to be personal property; and the same shall be governed by the rules and laws governing personal property in all cases, and the said property and the profits arising therefrom shall be vested in the respective shareholders, their heirs and executors, administrators and assigns, in the proportion of their respective shares, forever.

SEC. 20. **Road crossings.**—*Be it enacted*, That whenever it shall become necessary, in the construction of said road, to cross or intersect any public road now or hereafter established by law, it shall be the duty of said company so to construct said road as not to impede the passage or transportation of persons or property along the same.

SEC. 21. **Private crossings.**—*Be it enacted*, That when it shall be necessary to pass through the improved land of any individual, it shall be the duty of said company to provide such individual with a proper and suitable wagon way across said road from one part of his or her land to the other, if the same shall be required by said owner, at the time the route of said railroad [is] determined on, but the owner of such land may, at any time after said railroad shall be opened and completed, construct and make such wagon way across the same at his or her own expense, under the supervision and direction of said company.

SEC. 22. **Time of beginning and completing road.**—*Be it enacted*, That if said company shall not begin the railroad contemplated by this act or contract for the construction of some part thereof, on or before the first day of January, 1838, and complete the same on or before the first day [of] January, 1844, the interest of said company in said road shall be forfeited and cease, and also all right to take tolls.

**SEC. 23. May charge tolls, when; exemption from taxation.**—*Be it enacted*, That as soon as any section of five miles of said road shall be completed, the president and directors may transport all persons, produce, and commodities, such person or persons or owners of such produce or commodities first paying to said company or their agent the toll that may be demanded for that purpose. The capital stock of said company shall be forever exempt from taxation, and all their other property of every description situated within this state, including the road and rails, shall be exempt from taxation for and during the period of twenty years from the completion of said road and no longer.

**SEC. 24. Dividends.**—*Be it enacted*, That after said railroad shall be completed, or any five miles thereof, the president and directors shall, on the first Monday in January and July in each and every year, declare and make such dividends of net profits, or the tolls herein granted, as may be advisable, to be divided among the proprietors.

**SEC. 25. Injury to property of, punishment.**—*Be it enacted*, That if any person shall willfully injure, impair or destroy any part of said road constructed under this act, or any of the necessary work, buildings, machines, wagons, cars, booths, reservoirs, bridges or viaducts, such person shall be subject to indictment, and, on conviction, shall be fined and imprisoned at the discretion of the court and jury, and shall moreover be liable to an action of damages at the suit of said company in any court having cognizance thereof.

**SEC. 26. Transportation charges.**—*Be it enacted*, That said company shall be authorized to charge the following tolls, to wit: For every passenger, with not exceeding one hundred pounds of baggage, not exceeding six cents per mile; for every one hundred pounds of goods, wares, merchandise, or produce and commodities of every description, not exceeding one-half cent per mile on heavy articles, and ten cents per cubic foot on articles of measurement.

**SEC. 27. Connections with, authorized.**—*Be it enacted*, That full right and privilege is hereby reserved to the citizens



of this state, or any company hereafter to be incorporated under the authority of this state, to connect with the road hereby provided for any other railroad or public improvement, provided no injury is done to the works made and created by said company hereby incorporated; *And provided also*, That the same shall not interfere with the privileges hereinbefore granted.

SEC. 28. **Terminus changed, when.**—*Be it enacted*, That if an amount of stock should not be subscribed sufficient to complete the whole work from Knoxville to the south boundary line of this state, as contemplated by this act, or if a majority of the board of directors should deem it advisable or expedient to begin the work at some point on the Big Tennessee River, and should complete the road from such point to the south boundary line of the State of Tennessee, the work may be considered as completed, anything in this act to the contrary notwithstanding. But the board of directors may, in their discretion, continue said road to Knoxville, should they begin the work at some other point. (Acts Tenn. (local), 1835-6, p. 23.)

**3. Stevenson, Sand Mountain & Dalton Railroad Company allowed to connect with Nashville, Chattanooga & St. Louis Railway in Dade county, Georgia.**

SECTION V. . . . And that said railroad company shall have power and authority to lay out and construct branch roads from the main line at any point in Dade county, to intersect with the Nashville, Chattanooga & St. Louis Railroad Company and the Alabama Great Southern Railroad at any point in Dade county, Georgia, that may be selected by the company; and . . . (Acts Ga., 1889, sec. V., p. 393; approved November 13, 1889.)

**4. How service of process originally authorized against Nashville & Chattanooga Railroad Company by persons having claims against road in Georgia.**

WHEREAS, The Nashville & Chattanooga Railroad runs about three miles through the county of Dade, in this state, and

there being no station or agent in the state upon whom to perfect service on said company for any injury to stock, property or person; for remedy whereof,

*Be it enacted*, That from and after the passage of this act, the justices of the inferior court in and for the county of Dade shall cause to be erected a post at a place in said county known as Lookout, on said road, and upon any process, warrant, summons or notice from the superior, inferior or justices' court being issued against said company, and the same being posted on said post, and a copy thereof sent by mail to the address of the president of said railroad, on or before the day it is placed on said post, by the sheriff, constable or coroner authorized to serve the same, shall be deemed and held as a full and complete service, as if the same had been served on any officer, agent or employee of said company, and shall have the same binding effect as the service upon any of said officers, agents, and employees of any railroad company in this state; and said company is hereby held responsible and liable for all injury and damages to the citizens of this state that the several railroad companies in this state are, and the service of any writ, process, summons or notice by any officer authorized to serve the same, upon complying with terms aforesaid, shall be deemed and held complete and full in law. (Acts Ga., 1860, p. 45; passed December 20.)

1. This act was subsequently amended as follows:

SECTION 1. *Be it enacted*, That from and after the passage of this act the ordinary of the county of Dade shall cause to be erected a post at a place on the Nashville & Chattanooga Railroad, in said county, known as Hooker, and upon any warrant, summons, process, notice from any court or officer of said county being posted on said post and a copy sent by mail, as required by said act, shall be deemed and held a complete and full service, and that the said act, assented to 20th December, 1860, as hereby amended, is declared to be in full force.

SEC. 2. That no person complying with the provisions of this act shall be denied the privilege of suing in any court in said county having jurisdiction of the subject-matter, for any injury done by said Nashville & Chattanooga Railroad Company to his or her person or property: *Provided*, That any action that has already accrued shall be brought within the next six months after the passage of this act: *And provided further*, Said company shall not be liable to be sued for any damage done to the person or property of any person prior to the first of January, 1865. (Acts Ga., 1869, No. 126, p. 139.)

2. The supreme Court of Georgia, in the case of *N. C. & St. L. Ry. v. McMahon*, held the above act to be good and the service as provided for therein valid. 70 Ga., 585.

## CHAPTER III.

THE NASHVILLE & NORTHWESTERN RAILROAD COMPANY.  
(NORTHWESTERN BRANCH.)**How acquired by Nashville, Chattanooga & St. Louis Railway.**

—Under the general improvement laws of 1851–2, and amendments thereto, the State of Tennessee, through its governor, indorsed the bonds of the various railroads in the state, to aid in their construction, retaining a lien on the respective roads so assisted as security therefor. Among the number was the Nashville & Northwestern Railroad Company.

Default having been made in the payment of interest on the bonds issued for its benefit, a bill was filed in the chancery court at Nashville in the name of the state against the Edgefield & Kentucky Railroad Company *et als.*, to which the said Nashville & Northwestern Railroad Company was also made a defendant, seeking to enforce the state's lien or statutory mortgage. This bill was filed in pursuance of an act of the legislature of 1870–71, ch. 23, p. 25, authorizing the sale of all delinquent roads, the tenth section of which provided “that upon the sale of any of the franchises of either of the railroad companies by the commissioners under the provisions of this act, all the *rights, privileges, and immunities* appertaining to the franchise so sold, under its act of *incorporation*, and the *amendments* thereto, and the general improvement law of the state and acts amendatory thereof, shall be transferred to and vest in such purchaser, and the purchaser shall hold said franchise subject to all liens and liabilities in favor of the state, as now provided by law against the railroad companies.”

On July 6, 1871, a decree was entered directing the said Nashville & Northwestern Railroad to be sold, at which sale the Nashville & Chattanooga Railroad Company, which has subsequently changed its name to the Nashville, Chattanooga



& St. Louis Railway, became the purchaser. The amount paid for the road was \$2,400,000, in bonds of the state, with the coupons of January, 1871, and subsequent coupons attached, subject to the condition that the claim of the Nashville & Chattanooga Railroad Company against the Nashville & Northwestern Railroad Company for expenditures made under the lease of the latter road to the former, amounting to \$537,000, should be paid out of the purchase money in bonds of the state, the Nashville & Chattanooga Railroad Company agreeing to take \$700,000 of the bonds with the coupons attached in satisfaction of said debt.

This sale was confirmed November 21, 1872, as will fully appear in minute book "W," p. 485, of the chancery court at Nashville, Tenn.

Prior to the chancery court sale above mentioned, the Nashville & Northwestern Railroad Company had constructed its road from Nashville to Union City, Tenn., under its charter, and had purchased the Hickman & Obion Railroad, which was chartered both by the legislature of Tennessee (Acts 1853-54, ch. 307, p. 685), and by that of Kentucky (Acts 1853-54, ch. 781, p. 348), and which road extended from Union City, Tenn., to Hickman, Ky. The entire line of road from Nashville to Hickman, including that purchased from the Hickman & Obion Railroad Company, was sold under this decree, thus giving the purchaser a continuous line from Nashville, Tenn., to Hickman, Ky.

The sale of the Hickman & Obion Railroad to the Nashville & Northwestern Railroad was legal. It was authorized by Acts Tennessee, 1855-56, ch. 2, p. 3, and by Acts Kentucky, 1855-56, ch. 142, p. 281, both of which acts are set out in the next chapter, as well as the charter of the Hickman & Obion Railroad Company, and the deed to its road.

### **What franchises, etc., passed under the chancery court sale.**

—The decree of sale in this case, under and by virtue of the Acts of 1870-1, ch. 23, above referred to, "ordered, adjudged, and decreed that all the right, title, claim, and interest of all parties to the suit in and to the Nashville & Northwestern Railroad, its property and franchises, including the right to build a branch road from Huntingdon to Jackson, without any re-

sponsibility on the part of the state, be, and the same are hereby, divested out of them and vested in the Nashville & Chattanooga Railroad Company, in absolute right, with all the rights and privileges heretofore determined by the decrees of this court, that belong to the purchasers of the road sold thereunder, subject to the lien of the state for purchase money," etc. (See minute book "W," p. 485, in chancery court at Nashville: also book "V," p. 185.)

1. The sale vested in the Nashville, Chattanooga & St. Louis Railway all the *immunities* from taxation contained in the original charter of the Nashville & Northwestern Railroad Company. 12 Lea, 583; 117 U. S., 833.

2. See charter itself. and amendments thereto, following, for enumeration of franchises, rights, and immunities, all of which passed, save the unnecessary franchise in this instance of being a corporation. The latter franchise was unnecessary, as the Nashville & Chattanooga Railroad Company was already incorporated.

**Width of right of way.**—The Nashville, Chattanooga & St. Louis Railway, having purchased all the property, rights, franchises, privileges, and immunities of this company, as above explained, it is now entitled, on the line of this road, to all the rights conferred in secs. 23 and 24 of the charter of the Nashville & Northwestern Railroad Company, which give a *hundred feet* on each side of the center of said road, in the absence of any contract with the *original* landowner to the contrary. 5 Pick., 293.

There can be no question of this, on that part of the road from Nashville to Union City, as that was constructed by the Nashville & Northwestern Railroad Company under its *own charter*. As to that part from Union City to Hickman, Ky., however, which was constructed by the Hickman & Obion Railroad Company, under its charter, before the Nashville & Northwestern Railroad Company purchased it, and which charter contained no such clause, there is room for argument. It is clear that no such right would exist in favor of the Hickman & Obion Railroad Company, should that company still be in existence and own the road. With the Nashville, Chattanooga & St. Louis Railway it is different. That company is the lawful purchaser of the property, rights, franchises, and privileges of the Nashville & Northwestern Railroad Company. The

charter of the latter company, in both Tennessee and Kentucky, authorized it to build a road from Nashville to *Hickman*; and granted it one hundred feet on each side of the center of the road, in the absence of any agreement to the contrary with the original landowner, from and to the points mentioned as its termini. The mere fact that it *purchased* a farm, bridge, or even a *railroad*, lying within the limits of its authorized extension, would not deprive it of its statutory franchises.

If the Nashville & Northwestern Railroad Company had have only been chartered to run from Nashville to *Union City*, it might have been different. The purchase then of the Hickman & Obion Railroad might have vested it with only those franchises possessed by that company over that part of the road. As it was, however, it was chartered to run from Nashville to *Hickman*, and all the rights, privileges, and franchises contained in its charter were granted over its *entire route*. It is true that by Acts Tenn., 1855-6, ch. 2, p. 3, the Nashville & Northwestern Railroad Company was allowed to change its western terminus to Union City, Tenn., but this act was not accepted, as it also authorized the purchase of the said Hickman & Obion Railroad, which was done, thus extending its line to the western terminus originally mentioned in its charter. Should this act be construed, however, as changing the western terminus to Union City, it is even then an open question whether or not the rights, privileges, and franchises contained in the charter of the Nashville & Northwestern Railroad Company and the Nashville, Chattanooga & St. Louis Railway do not spread out and embrace this road, as well as all *after acquired* roads, for the authority to purchase and operate other roads would doubtless, by implication, change the termini of the original road and constitute the road so purchased a part of its main stem. Thus, in New Jersey, it was held that "where a railroad sixty feet wide is purchased by another company which had power to condemn a *hundred* feet, the latter company, after operating the road for several years, might widen it to a hundred feet." 23 N. J. L., 323; 4 Vroom, 323; *Rorer on Railroads*, p. 331.



If the Hickman & Obion Railroad Company, therefore, had have only condemned fifty feet, the original landowners, when the Nashville & Northwestern Railroad Company and the Nashville, Chattanooga & St. Louis Railway Company threw the mantle of their franchises over the road, would have had the right to apply for an extra assessment of damages for the difference in appropriation. If they failed to do so, they are now barred, and the Nashville, Chattanooga & St. Louis Railway Company should be entitled to one hundred feet on each side of the center of the road from Union City to Hickman.

This question has never been decided in Tennessee, however, and a test case should be made before any extensive work is undertaken.

For a general discussion of the right to take more than 100 feet on each side of the center of the road, when necessary for railroad purposes, see *Eminent Domain, Right of Way*, herein. Refer to index.

**Where Nashville & Northwestern Railroad Company incorporated.**—The Nashville & Northwestern Railroad Company was chartered both in Tennessee and in Kentucky. The Tennessee charter alone is set out in this chapter. The succeeding chapter will contain all acts of Tennessee and Kentucky in reference to the road. Among the latter acts will be found the Kentucky charter. The mere fact, however, that the Nashville, Chattanooga & St. Louis Railway purchased this road would not make it a domestic corporation of Kentucky. The Nashville, Chattanooga & St. Louis Railway has never been chartered in any state save Tennessee, though it owns and operates many branches that were originally chartered in Kentucky, Alabama, and Georgia. Such purchases, however, did not operate to incorporate it in those states. Elliott on Railroads, sec. 26; 1 Hilton (N. Y.), 62; 30 N. J. L., 473; 31 N. J. L., 531; 32 Ohio St., 468; 58 Pa. St., 26. See, however, 85 Tenn., 189.

**Distance built when purchased.**—The entire line of road from Nashville, Tenn., to Hickman, Ky., had been constructed when the Nashville & Chattanooga Railroad Company purchased this road.

## ORIGINAL CHARTER OF NASHVILLE & NORTH-WESTERN RAILROAD COMPANY.

[Acts Tennessee 1851-2, ch. 74.]

**SEC. 1. Incorporation, name, general powers.**—*Be it enacted by the General Assembly of the State of Tennessee,* That for the purpose of establishing a communication by railroad between Nashville and the Mississippi river, beginning at Nashville and terminating on the Mississippi river, in Obion county, the formation of a company is hereby authorized, which, when formed, shall be a body corporate by the name and style of the Nashville & Northwestern Railroad Company,\* and by the said corporate name shall be capable to buy, receive by gift, hold, sell and convey real and personal estate as hereinafter provided, make contracts, sue and be sued, make by-laws, and do all other acts properly incident to a corporation and necessary and proper to the transaction of the business for which it is incorporated, and to have and use a common seal, and the same to alter and destroy at its pleasure, and have perpetual succession of members.

Incorporation;  
name.

General  
powers.†

1. **\*Name changed.**—After the purchase by the Nashville & Chattanooga Railroad Company, as heretofore explained, of the properties, franchises, rights, privileges, immunities, etc., of this company, it filed a bill in the chancery court at Nashville, Tenn., and, among other things, asked that the name of this company be changed to the Nashville, Memphis & St. Louis Railway.\* This was granted, as per decree of May 14, 1872, entered in minute book V, pp. 185-192 of said court. This was clearly within the powers of the chancery court at that time. 3 Bax., 98; 1 Tenn. Ch. Rep., 83, 95, 97; 12 Lea, 97; 11 Lea, 3; 9 Lea, 380. Subsequently, however, the Nashville & Chattanooga Railroad Company, filed another bill, alleging it had purchased this road, and had its own name changed to the Nashville, Chattanooga & St. Louis Railway. See decree rendered May 30, 1873, in chancery court at Nashville in book X, pp. 220-222, which decree is also inserted herein. After this was done the name of the Nashville, Memphis & St. Louis Railway was abandoned, as its road had been absorbed by purchase into the general system of the Nashville, Chattanooga & St. Louis Railway.

2. **Incorporated in what states.**—In addition to this charter granted by the State of Tennessee, the legislature of Kentucky, on March 8, 1856, passed an act setting out this charter in full, and "re-enacted and adopted it," together with the amendments passed by the legislature of Tennessee, on February 28, 1852, and February 15, 1854, with all the privileges, franchises, powers, and responsibilities conferred and granted by said charter, so far as the same were applicable and not inconsistent with the constitution of Kentucky. This act, together with all others of Tennessee and Kentucky relating to the road, are set out in the next chapter.

As will be seen, this act made the Nashville & Northwestern Railroad Company a *domestic* corporation of Kentucky, and gave it certain advantages which will be more fully explained hereafter.

The mere fact, however, that the *Nashville, Chattanooga & St. Louis Railway* purchased the railway would not make the said Nashville, Chattanooga & St. Louis Railway a *domestic* corporation of Kentucky. The Nashville, Chattanooga & St. Louis Railway has never been chartered in Kentucky, and is therefore a foreign corporation there, though it operates this branch in that state with all the rights, privileges, and franchises of the old company, which was a domestic corporation in Kentucky as well as Tennessee.

3. **†General powers.**—By Acts Tenn., 1865-6, ch. 91, p. 274, this company was allowed to construct a branch road from Huntington, to connect with the Mississippi Central & Tennessee and the Mobile & Ohio Railroad. For terms and conditions. see act itself in chapter following.

4. By Acts Tenn., 1857-8, ch. 89, this company was empowered to unite its road with the Memphis, Clarksville & Louisville Railroad Company; to change the location of its route; to consolidate with the Mississippi & Tennessee Central Railroad. For terms. see act itself in chapter following.

5. By Acts Tenn., 1855-6, ch. 11, p. 3, this company was authorized to lease or consolidate with the Hickman & Obion Railroad; also to fix its western terminus at the intersection of the Mobile & Ohio Railroad. For terms, see act itself in chapter following.

6. By Acts Tenn., 1859-60, ch. 177, this company was authorized to lease or consolidate with the Mississippi Central Railroad Company, or to unite with any company whose road may connect with it in the direction of New Orleans. For terms. see act itself in chapter following.

7. By Acts Tenn., 1853-54, ch. 132, § 7, this company was allowed, from its intersection with the Nashville & Memphis Railroad Company, and the Memphis, Clarksville & Louisville Railroad Company, the same right, power, and privilege to run its cars upon the tracks of either of said roads as is provided in the act chartering the Memphis & Charleston Railroad Company, at the point of intersection with the Nashville & Chattanooga Railroad Company. See act itself in chapter following.

## SEC. 2. Value of shares, books opened, commissioners.—

Books of subscription of thirty thousand shares to the capital stock of said company, of one hundred dollars each, shall be kept open for sixty days, between the hours of ten o'clock in the morning and four o'clock in the evening of each of those days, at the following places, and by the following commissioners, to wit:

At Nashville, Thomas Harding, Jacob McGavock, L. Davidson, ——— Joslin, M. R. Cockrill, W. Dozier, H. Hollinsworth, M. Barrow, W. Watkins, Samuel Watkins, D. T. McGavock, Willoughby Williams, West H. Humphreys, A. W. Vanleer, Francis McGavock, Daniel Graham, John Harding, Clark Bosley, ——— Newsom, ——— Atkinson, Bird Douglas, and Thomas Sheron.



At Charlotte, Sylvester Finley, Robert McNeilly, Thos K. Grigsby, John C. Collier, and William H. Napier.

At Waverly, John Wiley, T. B. Groin, Robert McCreary, V. S. Allen, H. H. Marable.

At Camden, William McCutchen, C. K. Wyley, W. P. Morris, E. Perkins, and D. P. Hudson.

At Paris, B. C. Brown, J. W. Blanton, W. H. Thompson, J. C. McNeil, L. M. Tharp, and C. D. Venable.

At Dresden, Wm. Gleeson, Jno. A. Gardner, Collins McCutchen, James W. Hays, Alfred Gardner, and Wm. Snapp.

At Troy, ——— Cochrane, P. Marberry, ——— Moffat, W. S. S. Harris.

At Dover, A. W. Wall, Samuel Graham, T. H. Atkins, Wm. B. Cherry, and J. M. Wall.

By decree of chancery court at Nashville, May 14, 1872, minute book "V," pp. 185-192, the charter was amended so that the capital stock should be eighteen thousand shares, of one hundred dollars each, and allowing the capital stock to be increased at any time. But see discussion of validity of chancery court amendments herein.

**SEC. 3. Subscriptions to stock, payment.**—That said commissioners, or any two of them, at each of the places aforesaid, shall receive subscriptions for stock in said railroad company during the time the said books are directed to be kept open, and on each share so subscribed shall demand and receive the sum of five dollars in cash, or a note or check for the same, without which the subscription shall be void.

1. By Acts Tenn., 1853-4, ch. 312, sec. 4, the company was allowed to receive subscriptions for three-quarters, half, and quarter shares, and issue certificates for same.

2. By Acts Tenn., 1851-2, ch. 292, sec. 2, the charter was amended so that stockholders should not be required, upon subscribing, to pay more than one per cent. of their subscriptions. See, also, Acts of 1851-2, ch. 285, sec. 12, which also amended the charter so that the acts of any three commissioners at any one place became valid without concurrence of whole board.

3. By Acts 1857-8, ch. 60, p. 128, sec. 7, the company was given the extra time of two years in which to get the stock and prepare a section for the iron.

**SEC. 4. Deposit of money, commissioners, incorporation perfected, when.**—As soon as the time for receiving subscriptions, as aforesaid, shall have expired, the said commissioners shall, respectively, deposit all the money so received by them

**Deposit of money.** in some incorporated bank, redeeming its notes in specie, to the credit of the Nashville & Northwestern Railroad Company, and subject to the order of the president of the board of commissioners, hereinafter appointed, and shall also furnish a correct list of all the subscribers to said stock, with the number of shares each subscriber has taken, to a board of commissioners to be composed of the following persons: Thos. Harding, A. W. Vanleer, — Atkinson, — Newsom, B. Collier, Benj. Robertson, John Wiley, T. B. Gorin, Thos. McNeilly, T. K. Grigsby, S. Finley, T. Cooney, J. C. Currier, Wm. W. Moody, John H. Dunlap, J. C. D. Atkins, J. E. R. Ray, Em. Etheridge, J. W. Hays, A. G. Holden, P. Marberry, W. U. Watkins, Dr. Head, Col. Wm. McCutchen, Wm. F. Dougherty, John Wiley, B. B. Spicer, T. B. Gorin, S. C. Pavatt, and James C. Dunlap, who may establish rules to govern their proceedings, choose their own president, and appoint such other officers and agents as they may think proper; and who, or a majority of whom, shall meet at Nashville on the third Monday in April next, to ascertain the whole number of shares taken in the said company, and publish the same in some newspaper printed in Nashville, on or before the first Monday in May next, and if the number of one thousand shares shall have been subscribed, on each of which there shall have been paid the sum of five dollars, the Nashville & Northwestern Railroad Company shall be regarded as formed, and thenceforth, and from the day of the closing of the books of subscription as aforesaid, the said subscribers to the stock shall form a body corporate and politic, in deed and in law, by the name and for the purpose aforesaid, and in all things to be represented by the board of commissioners aforesaid, until the board of directors are elected, as hereinafter prescribed.

**Incorporation perfected.**

By Acts Tenn., 1851-2, ch. 285, sec. 12, this charter was amended so that the acts of any three commissioners at any one place should be valid without the concurrence of all.

**SEC. 5. Books kept open, when; incorporation, commissioners.**—If on closing the books aforesaid, the number of one

thousand shares shall not have been subscribed, then, and in that case, the said board of commissioners, by themselves or their agents, may receive subscriptions until the number of one thousand shares be taken; and whenever that number of shares shall be subscribed, the company shall be considered as formed, as having a corporate existence as aforesaid, and of which notice shall be given as hereinbefore directed, and may proceed to survey the route for the road and make an estimate of the cost of its construction; nevertheless, no conclusive and binding location of the road shall be made by the board of commissioners, but the same may be left to the determination of the first board of directors chosen by the stockholders. And the said board of commissioners may, by themselves or their agents, at such times and places as they may think proper, and upon such terms as to time and manner of payment as they may deem expedient, receive additional subscriptions until the number of ten thousand shares shall have been subscribed, upon which the company may be formed, and the subscribers shall thenceforth form a body corporate as aforesaid; *Provided*, the same shall be done on or before the first day of January, 1858; and for the residue of the original number of thirty thousand shares the said corporation, when organized, may, in like manner, receive additional subscriptions.

Books kept open.

Commissioners.

Incorporation.

**SEC. 6. Reduction of shares.**—In case more than thirty thousand shares shall have been subscribed on closing the books, when they are first opened, the shares shall be reduced to that number by deducting the surplus shares from the highest subscribers, placing them on equality of numbers as far as can be done, and, after such reduction, the holders of the remaining shares shall form the company and be interested therein in proportion to the number of shares which they may then respectively hold.

**SEC. 7. Money returned if shares not subscribed.**—If, on closing the books on the first day of January, 1858, the number of ten thousand shares shall not have been subscribed, the money paid by each subscriber shall be returned to him by the



said board of commissioners after paying the expenses of opening the books and of making a survey and map of the route and estimate of the cost of the road, which the said commissioners are hereby authorized to have made as soon as practicable.

**SEC. 8. President and directors, how chosen.**—The affairs of said company shall be managed by a board of directors, to consist of fifteen, and who shall be chosen by the stockholders from their own body, and a president of the company shall be elected by the directors from their own numbers, in such manner as the regulations of the corporation shall prescribe.

1. This section was affected by decree of chancery court at Nashville May 14, 1872, entered in minute book "V," pp. 185-92, so that the affairs of the company should be managed by the directors for the time being of the Nashville & Chattanooga Railroad Company, by which the president, and such other officers as may be determined by the by-laws, shall be elected or appointed.

2. This road is now owned by the Nashville, Chattanooga & St. Louis Railway, whose directors control it as a part of its system. The directors of the general system are elected under the charter of the Nashville, Chattanooga & St. Louis Railway proper. See notes to sec. 8 of that charter.

**SEC. 9. Stockholders' first meeting, directors elected, by-laws.**—As soon as the number of one thousand shares shall have been subscribed, it shall be the duty of the commissioners appointed to declare the same, to appoint a time for the stockholders to meet in Nashville, and to give notice thereof by publication in some of the newspapers in Nashville, at which time and place the stockholders, in person or by proxy, shall proceed to elect the directors of the company and to enact all such regulations, rules, and by-laws as may be necessary for the government of the corporation and the transaction of its business. The persons elected directors at this meeting shall serve for such period not exceeding one year as the stockholders may direct, and at this day the stockholders shall fix on the day the subsequent election of directors shall be held, and such election shall thenceforth be annually made. But if the day of the annual election shall pass without any election of directors, the corporation shall not thereby be dissolved, but it shall be lawful on any other day to hold and make said election in such manner as may be provided by a by-law of the corporation.

See notes to sections 8 and 9 of the charter of Nashville & Chattanooga Railroad Company, chapter 1, herein.

**SEC. 10. Vacancies in board, how filled.**—The board of directors may fill all vacancies which may occur in it during the period for which their board shall have been elected, and, in the absence of the president, may fill his place by electing a president *pro tempore*.

See section 10 of charter of Nashville & Chattanooga Railroad Company, herein.

**SEC. 11. Contracts and agreements binding without seal.**—All contracts and arrangements authenticated by the president of the board shall be binding on the company without seal, or such other mode of authentication may be used as the company, by its by-laws, may adopt.

1. This section was amended by decree of chancery court May 14, 1872, entered in minute book "V." pp. 185-92, at Nashville, so as to read, "all contracts authenticated by the president of the board shall be binding on the company without seal, and such other mode of authentication may be used as the by-laws may prescribe."

As to validity of chancery court charters, however, see discussion herein; see index.

2. **Deeds require seal.**—Deeds to real estate, however, were required at common law to be under seal, and neither the above section nor § 2478 of the code (M. & V.) change this law. The seal, in such cases, must be attached. 10 Pick. (Tenn.), 460.

See index for discussion of this.

**SEC. 12. Liability of directors.**—The board of directors shall not exceed, in their contracts, the amount of the capital stock of the corporation, and of the funds which the company may have borrowed and placed at the disposal of the board; and in case they shall do so the president and directors who may be present at the meeting at which such contract or contracts so exceeding the amount aforesaid shall be made, shall be jointly and severally liable for the excess, both to the contract or contractors and to the corporation; *Provided*, That anyone may discharge himself from such liability by voting against such contract and causing such vote to be recorded on the minutes of the board and giving notice thereof to the next general meeting of the stockholders.

See notes to sec. 12 of Nashville & Chattanooga Railroad charter for discussion of liability of directors. See, also, general discussion herein. Refer to index.

**SEC. 13. Exclusive transportation, freight charges.**—The said company shall have the exclusive right of transportation or

conveyance of persons, goods, merchandise, and produce over said railroad by them to be constructed; *Provided*, That the cost of transportation or conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement, for every hundred miles, and five cents a mile for every passenger; *And provided also*, That said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned.

1. **Amendment by chancery court.**—By decree of chancery court at Nashville, May 14, 1872, minute book "V," pp. 185-92, this section was amended so as to read: "Said company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, and produce over the railroad by it *controlled* and managed or constructed." The balance was identical with the section above.

For validity of this amendment, however, see discussion herein of chancery court amendments; refer to index.

2. **Rate of charge.**—See discussion under sec. 14 of Nashville & Chattanooga Railroad Company charter herein.

3. **Exclusive transportation.**—See notes to sec. 14 of Nashville & Chattanooga Railroad Company charter herein.

**SEC. 14. Installments, suits for.**—The board of directors may call for the payment of ninety-five dollars on each share of stock in sums not exceeding ten dollars in every thirty days; *Provided*, That twenty days' notice be given of such call in at least one public newspaper of the state in which any of the stockholders may reside, and a failure to pay or secure to be paid, according to the rules of the company, any of the installments so called as aforesaid, shall induce a forfeiture of the share or shares on which default shall be so made and all payments thereon, and the same shall vest in and belong to the company, and may be restored to the owner or owners by the board of directors if they deem proper, on the payment of all arrears on such shares and legal interest thereon, or the directors may waive the forfeiture after thirty days' default and sue the stockholder for the installments due, at their discretion.

1. The legislature, by Act 1855-56, ch. 2, sec. 5, released the stockholders in Henry and west of the Mobile & Ohio Railroad from their subscriptions to this road.

2. By Acts 1855-56, ch. 104, p. 117, this railroad was authorized to issue stock, with consent of Davidson county court, to taxpayers for amount of annual tax paid or to be paid by them, by virtue of railroad bonds issued by county for this purpose.



**SEC. 15. Stock, how transferred.**—The stock of said company may be transferred in such manner and form as may be directed by the by-laws of said corporation.

This section was re-enacted by decree in chancery court at Nashville, May 14, 1872, sec. 6, minute book "V," pp. 185-92, in amending the other sections of the charter.

The stock in the Nashville, Chattanooga & St. Louis Railway now represents this road, as well as all others forming the system. For method of stock transfers under that charter, see sec. 16.

**SEC. 16. Capital increased, how.**—The said company may, at any time, increase its capital to a sum sufficient to complete said road and stock it with everything necessary to give it full operation and effect, either by opening books for new stock or by selling such new stock, or by borrowing money on credit of the company, and on the mortgage of its charter and works, and the manner in which the same shall be done in either case shall be prescribed by the stockholders at a general meeting; and any state or any citizen, corporation, or company of this or any other state or country may subscribe for and hold stock in said company, with all the rights and subject to all the liabilities of any other stockholder.

1. This section was amended by decree of chancery court at Nashville, May 14, 1872, minute book "V," pp. 185-92, so that the capital stock could be increased at any time by two-thirds of entire number of directors. See discussion herein, however, as to validity of this. Refer to index.

2. The above section of the original charter gave the company only the *limited* power to issue bonds and mortgage its property to *complete* and *equip* its road, and for no other purpose. 4 Pick. (Tenn.), 138.

See sec. 17 of charter of Nashville & Chattanooga Railroad Company, ch. 1, herein.

**SEC. 17. Directors' annual report, may call general meeting.**—The board of directors shall, once in every year at least, make a full report of the state of the company and its affairs to a general meeting of the stockholders, and oftener if directed by a by-law, and shall have power to call a general meeting of the stockholders when the board may deem it expedient.

See sec. 18 of charter of the Nashville & Chattanooga Railroad, herein.

**SEC. 18. Qualification of officers and voters.**—No person but a *bona fide* stockholder in his own right of at least ten shares, which he shall have held at least three months previous to his election (except the first election), shall be president or a

director of the company; nor shall any stockholder vote in person or by proxy at any general or other election (except the first), who shall not have held in his own right the shares on which he offers to vote, at least three months previous to such election.

See note to sec. 19 of Nashville & Chattanooga Railroad Company charter herein, ch. 1.

**SEC. 19. Method and scale of voting for directors.**—Stockholders may vote in person or by proxy, and, in the election of directors and in voting on all questions which come before a meeting of the stockholders, or which may be submitted to the decision of the stockholders in any other manner, the vote shall be taken according to the following scale, viz.: Each stockholder shall have one vote for each share he owns; *Provided*, That no individual, corporation, or company shall be entitled to more than five hundred votes.

1. This section was also amended by decree of the chancery court at Nashville, May 14, 1872, minute book V. pp. 185-192, so as to read as follows: "Stockholders may vote in person or by proxy, and, in voting on all questions which may be submitted to the decision of the stockholders, each stockholder shall be entitled to one vote to each share of stock owned by him or her.

2. Previous to this the legislature, by Acts 1868-69, ch. 2, sec. 4, had allowed all charters to be amended to the same effect, if the company desired.

3. No elections are now held under this charter. The board of directors of the whole system are elected and all corporate business transacted under the charter of the Nashville, Chattanooga & St. Louis Railway. See section 20 of said charter.

**SEC. 20. Real property may be purchased for what.**—That said company may purchase, have and hold in fee or for a term of years, any lands, tenements, and hereditaments which may be necessary for said road or appurtenances thereof, or for the erection of depositories, storehouses, houses for the officers, servants, or agents of the company, or for workshops or foundries to be used for said company, or for procuring timber, stones, or any other materials necessary for the construction of the road or its appurtenances, or for effecting transportation thereon, or for other purposes.

For the purposes enumerated in the above section, the railway cannot condemn, but must rely upon its *purchasing* power therein conferred. 11 Hum., 347. See general discussion of this under *Eminent Domain*, herein: refer to index.

**SEC. 21. Crossing roads and water courses.**—That said company shall have the right, when necessary, to construct the said road, or any branch thereof, across or along any public road or water course; *Provided*, That the said road and the navigation of such water course shall not be thereby obstructed.

1. For crossing of Tennessee river, see sec. 43 of this charter.

2. Where the railroad crosses public roads already in use, it must, unless relieved by statute, not only restore the public road, but erect and maintain perpetually all structures, and keep up all repairs made necessary by such crossing, for the safety and convenience of the public. 3 Pick. (Tenn.), 712. But this law does not apply where a public road subsequently crosses the *railroad*. See discussion herein of this subject; refer to index.

3. The term "public road" in this charter does not embrace the streets and alleys of a city. 3 Head, 596.

4. The temporary and necessary obstruction of navigation in the construction or repair of a bridge is not unlawful under this section, nor within the prohibition of § 1527 of the Code (M. & V.) of Tenn.; 6 Pick. (Tenn.), 638. But see 5 Sneed, 427; 1 Bax., 55.

See sec. 22 of charter of Nashville & Chattanooga Railroad Company, herein.

**SEC. 22. Purchase of bridges, roads, etc.**—The said company may purchase, have and hold any bridge or turnpike road over which it may be necessary to pass, and, when such purchase is made, to hold the said bridge or turnpike road on the same terms and with all the rights which belong to the individual, individuals, or corporation from which such purchase may be made; *Provided*, That the said company shall not obstruct any public road without constructing another as convenient as may be.

1. The term, "as convenient as may be," in the above section, does not mean that the new road must be as convenient and easy of passage and as *safe* as the old road, but that it must be so constructed as to answer the purposes of the traveling public, and be made as easy and convenient as the nature of the ground will permit, having regard to the rights of the public, and not requiring unreasonable outlays of money by the company. 1 Bax. (Tenn.), 55.

2. This section was amended by decree of the chancery court at Nashville, May 14, 1872, minute book V, pp. 185-192, sec. 9, so as to read: "The said company may purchase, have and hold any bridge or turnpike or other road over which it may be necessary to pass, and, when such purchase is made, to hold the said bridge or turnpike or other road on the same terms and with all the rights which belong to the individual or corporation from which such purchase may be made."

3. As to validity of this, see discussion of chancery court amendments herein. Refer to index. See sec. 23 of Nashville & Chattanooga Railroad Company charter, herein.

**SEC. 23. Condemnation for right of way.**—Where any



lands or rights of way may be required by the said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated, and the said commissioners, before they act, shall severally take an oath before some justice of the peace faithfully and impartially to discharge the duty assigned them. In making said valuation the commissioners shall take into consideration the loss or damage which may occur to the owner or owners of the land in consequence of the land being taken or the right of way surrendered, and also the benefit and advantage he, she, or they may receive from the erection or establishment of the railroad or works, and shall state particularly the nature and amount of each, and the excess of loss and damage, over and above the benefit and advantage, shall form the measure of valuation of the said land or right of way. The proceedings of said commissioners, accompanied with a full description of the said land or right of way, shall be returned under the hands and seals of a majority of the commissioners to the court from which the commission issued, there to remain a matter of record. In case either party to the proceedings shall appeal from the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged therewith in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties unless a new trial shall be granted, and the lands or right of way so valued by the commissioners or jury shall vest in the said company in fee simple, so soon as the valuation may be paid, or when refused, may be tendered, to the extent of two hundred feet wide. Where there may be an appeal, as aforesaid, from the valuation of the commissioners

Damages for  
land taken,  
how ascer-  
tained.

By sworn com-  
missioners.

Commission-  
ers to consider  
what.

Appeal.

of either of the parties, the same shall not prevent the works intending to be constructed from proceeding, but where the appeal is by the company requiring the surrender, they shall be at liberty to proceed with their works only on condition of giving to the opposite party a bond <sup>Work to proceed, how.</sup> with good security, to be approved by the clerk of the court where the valuation is returned, in a penalty equal to double the said valuation, and interest, in case the same be sustained; and, in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court; *Provided*, That when the land cannot be had by gift or purchase, the operations of the work are not to be hindered or delayed during the pendency of any proceeding to assess its value as aforesaid, nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

1. The Nashville, Chattanooga & St. Louis Railway having purchased all the property, rights, franchises, privileges, and immunities of this company, it has fallen heir to all the rights of this and the succeeding section. Hence, if the right of way of this company was not originally paid for by it, and there is no contract with the landowner to the contrary, the Nashville, Chattanooga & St. Louis Railway, as the owner of this branch, would now be entitled to one hundred feet on each side of center of track when necessary for railroad purposes. 5 Pick., 293.

2. Land may be condemned on this branch for *approaches* to road for persons and vehicles, and for places for receiving, delivering, loading, and unloading goods, merchandise, etc., but not for land for the purpose of depositories, storehouses, workshops, and houses for agents, etc. 11 Mum., 347.

3. See general discussion herein under *Eminent Domain*. See, also, notes to sec. 24 of charter of Nashville & Chattanooga Railroad Company herein, ch. 1.

**SEC. 24. In absence of contract, right of way one hundred feet, when.**—In the absence of any contract with the said company in relation to lands through which the said road may pass, signed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the road may be constructed, together with a space of one hundred feet on each side of the center of said road, has been granted to the company by the owner thereof, and the said company shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used only for the purposes of the

road, and no longer, unless the person or persons owning the said land at the time that part of the road which may be on said land was finished, or those claiming under him, her, or them, may apply for an assessment for the value of said lands as hereinafter directed, within five years next after that part of said road was finished, and, in case the said owner or owners, or those claiming under him, her, or them, shall not, within five years after the said part was finished, apply for such assessment, he, she, or they shall be forever barred from recovering the said land or having any assessment or compensation therefor; *Provided*, Nothing herein contained shall affect the rights of *femes covert* or infants until two years after the removal of their respective disabilities.

For discussion of this section. see notes to section 25 of the charter of the Nashville & Chattanooga Railroad Company. The two sections are the same. See, also, general discussion herein under *Eminent Domain*. Refer to index. The Nashville, Chattanooga & St. Louis Railway, in purchasing this road, acquired all the rights and privileges of this section.

**SEC. 25. Forfeiture and penalty for intrusion.**—If any person shall intrude upon the said railroad, or any part thereof, by any manner of use thereof, or of the rights and privileges connected therewith, without the permission or contrary to the will of said company, he, she, or they shall forthwith forfeit to the said company all the vehicles that may be intruded on said road, and the same may be recovered by suit at law, and the person or persons so intruding may also be indicted for misdemeanor, and, upon conviction, fined and imprisoned by any court of competent jurisdiction.

This section was re-enacted by decree of chancery court at Nashville, May 14, 1872, sec. 12, minute book "V," pp. 185-192, in amending the other sections of the charter.

As to the misdemeanor, see 3 Hum., 481-483.

**SEC. 26. Obstructing or damaging road or bridge, punishment.**—If any person shall willfully or maliciously destroy, or in any manner hurt, damage, or obstruct the said railroad or any bridge or any vehicle used for or in the transportation thereon, such person or persons so offending shall be liable to be indicted therefor, and, on conviction, shall be imprisoned not more than six nor less than one month and pay a fine of not



less than twenty dollars, and shall be further liable to pay all the expenses of repairing the same, and it shall not be competent for any person so offending against the provisions of this charter to defend himself by pleading or giving in evidence that he was the owner or agent or servant of the owner of the land where such destruction, hurt, damage, injury, or obstruction was done or caused at the time the same was caused or done.

Subsequent legislation has rendered this section of the charter unnecessary if not inoperative. See notes to section 27 of the charter of the Nashville & Chattanooga Railroad Company, chapter 1, herein. The sections are the same, and hence notes are here omitted.

**SEC. 27. Obstruction a public nuisance.**—Every obstruction to the safe and free passage of vehicles on the said road shall be deemed a public nuisance, and may be abated as such by an officer, agent, or servant of the company, and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

The word "obstruction," as used by railroad men, is not a term of art as requires explanation by an expert. 6 Heis., 347. See, also, 3 Head, 522; 1 Bax., 55.

**SEC. 28. Storage charges allowed, when.**—The said company shall have the right to take, at the storehouses they may establish, or next to their railroad, all goods, wares, merchandise, or produce intended for transportation, prescribe the rules of priority, and charge and receive such just and reasonable compensation for storage as they, by rules, may establish, which they shall cause to be published, or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation; *Provided*, That the said company shall not charge or receive storage on goods, wares, or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have no power of transporting immediately.

See notes to sec. 29 of the charter of the Nashville & Chattanooga Railroad Company, chap. 1, herein.

**SEC. 29. Dividends, paid when.**—The profits of the company, or so much thereof as the board of directors may deem advisable, shall, when the affairs of the company will permit,

be semiannually divided among the stockholders in proportion to the stock each may hold.

See notes to sec. 31 of the charter of the Nashville & Chattanooga Railroad Company, herein. Dividends are now paid under the charter and by-laws of that company.

**SEC. 30. Banking prohibited, may insure.**—The said company is hereby expressly prohibited from carrying on any banking operation, but may effect insurance on lives and property transported on the road.

See notes to sec. 31 of the charter of the Nashville & Chattanooga Railroad Company, chap. 1, herein.

**SEC. 31. Crossings of roads and lands.**—Wherever, in the construction of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary to pass through the land of any individual, it shall be their duty to provide for such individual a proper wagon way or ways across said road from one part of his road to the other.

See notes to sec. 32 of the charter of the Nashville & Chattanooga Railroad Company. The two sections are the same.

**SEC. 32. Additional powers.**—The said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted in this charter and for the successful construction and management of the work.

See notes to section 33 of charter of Nashville & Chattanooga Railroad Company, herein.

**SEC. 33. Exemption from military, jury, and road duty.**—The president, directors, clerks, agents, officers, and servants of said company shall be exempt from military duty, except in cases of invasion or insurrection, and shall also be exempt from serving on juries and working on public roads.

This is class legislation and unconstitutional. 4 Lea. 316; 91 Ala., 70; 53 A. & E. R. R. Cases, 37.

**SEC. 34. Slaves, power to buy.**—The company shall have full power and authority to purchase and own such number of slaves

as shall be necessary for the construction of said road and for keeping the same in repair.

Slavery abolished by constitution of 1870.

**SEC. 35. Directors trustees on dissolution.**—If, by decree or otherwise, the said corporation shall be dissolved, the president and directors of said company are created trustees, with such powers only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and distribute the property and effects of the company to those who may be entitled thereto under the charter.

This company is now dissolved, though its rights, privileges, franchises, and immunities belong to the Nashville, Chattanooga & St. Louis Railway, and are exercised by it. See sec. 37 of charter of that company, herein.

**SEC. 36. Exemption from taxation.**—The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer.

1. The Nashville, Chattanooga & St. Louis Railway, having purchased this road under proceedings instituted by the state, the immunity from taxation passed to it by the sale, as well as all its other rights, privileges, franchises, and immunities. 12 Lea, 583; 117 U. S., 833.

2. Exemptions from taxation in charters prior to the constitution of 1870, and accepted by the incorporators and acted upon, is a contract binding upon the state, which cannot be impaired. 2 Pick., 614; 13 Lea, 400; 9 Bax., 442; 3 Pick., 155; 8 Bax., 539; 80 U. S., 568; 87 U. S., 282; 83 U. S., 326; 117 U. S., 129.

**SEC. 37. Road to be completed, when.**—The railroad authorized by this act shall be commenced within three years after the passage of this act, and shall be finished within ten years thereafter, otherwise the charter hereby granted shall be void.

1. This section was amended by Acts Tenn., 1853-54, ch. 312, sec. 2, so as to allow the company three years from the passage of the act to commence their work, and four years from the passage of the act to complete a section of thirty miles, ready to receive the iron rails, and that the company should receive the state aid as provided by the act of February 11, 1852, entitled "An act to establish a system of internal improvement in this state," provided the road should be located through Dickson county.

2. By Acts Tenn., 1853-54, ch. 132, sec. 7, the railway was given four years to complete the first thirty miles of said road, as provided by act of February 11, 1852.



By Acts: 1857-58, ch. 60, p. 128, sec. 7, the company was granted an additional two years in which to get the stock and prepare a section for the iron.

**SEC. 38. Branches, who may build, duty of this road as to.**—Any individual or individuals, company or body corporate, with permission of the legislature of this state, may hereafter construct branches to connect with the Nashville & Northwestern Railroad, and it shall be the duty of said company, when required, to receive on their road the full loaded freight cars from such branches and transport the same to their destination, and to return them without changing the loads thereof or charging for the goods, wares, merchandise, and produce therein any greater rate of freight than they charge for similar goods, wares, merchandise and produce in their own cars; *Provided*, That the company shall not be compelled to receive said cars on their road unless they are constructed in the same manner and are of equal strength with their own cars, of which the engineer of the main road shall be the judge; *And provided*, That the company shall not be required to receive any car from such branches without receiving payment for at least twenty miles transportation; *And provided also*, That the said company shall be entitled to similar and equal privileges on such branches constructed to unite with their road with the same restraints.

1. See notes to section 40 of the charter of the Nashville & Chattanooga Railroad Company, herein.

2. By Acts 1865-66, ch. 91, p. 274, this company was allowed to build a branch road from Huntingdon to the Mississippi Central & Tennessee and the Mobile & Ohio railroads. For terms and conditions, see act itself in chapter following.

**SEC. 39. First election, number of directors, by-laws.**—That the board of commissioners of the Nashville & Northwestern Railroad is hereby authorized and empowered to ap-

<p><b>Number of directors.</b></p>	point three judges and two clerks for the purpose of holding an election for fifteen directors of said company, and upon the certificate of said judges the said directors shall be authorized to qualify as directors, and to make all
<p><b>Rules and by-laws.</b></p>	rules, regulations, and by-laws necessary for the government of said company and the management of

its affairs, and not inconsistent with the general laws of the land.

**SEC. 40. Judges and clerks of election, how appointed.**—That the board of directors of said company shall have power to appoint three judges and two clerks, from year to year, for the purpose of holding an election for directors.

The charter of the Nashville & Chattanooga Railroad Company now controls this.

**SEC. 41. Dividends before completion, how paid.**—That the said company be required to estimate and credit, semiannually, to the several holders thereof, a sum equal to six *per centum* per annum on the capital stock of said company actually paid in, to be charged to the cost of construction until the road opens for business, provided a majority of the stockholders, at their first regular meeting, agree thereto.

**SEC. 42. Work to commence where.**—That when a sufficient portion of the stock of the company is taken to commence work on said road that the work be commenced at the same time at Nashville and at the Mississippi River, and that the work be thus continued until said road be completed.

This section was amended by Acts Tenn., 1853-4, ch. 312, sec. 1, so as to read as follows: "That the president and board of directors of the Nashville & Northwestern Railroad Company may commence the work on said road where it intersects the Mobile & Ohio Railroad, in Obion county, Tennessee, at the point where the cheapest and most practicable route to the Madrid Bend will strike said Ohio & Mobile Railroad, to be ascertained by a sworn engineer, and prosecute their work eastwardly from that point, instead of commencing on the Mississippi River, as required in the forty-second section of their charter, and also on both banks of the Tennessee River, if, in the opinion of the board of directors, it is expedient to do so: *Provided*, That no call shall be made on the stockholders residing west of the Mobile & Ohio Railroad until that part of the Nashville & Northwestern Railroad lying west of the Mobile & Ohio Railroad is under contract; *And provided further*, That this amendment shall not be binding upon the company or become a part of its charter until the same is ratified at a general meeting of the stockholders in said company [called for the purpose by order of the board of directors] by a vote of a majority in the interest of the stockholders, counting the votes according to the basis fixed in the charter of said company in the election of directors."

**SEC. 43. Bridge across Tennessee river, how constructed.** That in the construction of a bridge across the Tennessee river, for the purpose of avoiding any interference with the navigation of said river, it shall be the duty of said company to build

said bridge at least thirty feet above extreme high water mark, between any two piers the company may deem best, and the distance between the two so selected shall be at least one hundred and fifty feet, so as to afford free and safe passage for all size boats. (Acts 1851-52, ch. 74; passed January 22, 1852.)

1. This section was amended by Acts Tenn., 1853-54, ch. 312, sec. 3, so as to allow the company to construct a drawbridge across the Tennessee river, so as not to obstruct the free navigation of said river.

2. **Congress acts.**—By acts of congress, 1888 and 1890, the determination of the character of bridges, etc., over all *navigable* streams has been taken from the state legislatures. Prior to this time, congress had no jurisdiction over the navigable waters within the territorial limits of a state, as there was no common law of the United States independent of statute. Until congress acted, therefore, the matter rested with the state. Hence, the above acts. Since congress has taken charge, however, these state acts are of no particular value. The bridge must be constructed according to the acts of congress, which it now is.

3. For method of procedure in building or repairing bridges over navigable streams, under act of congress, see herein. Refer to index.

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## CHAPTER IV.

### ACTS AND DECREES AMENDING CHARTER OF, AND RELATING TO, THE NASHVILLE & NORTHWESTERN RAILROAD COMPANY IN TENNESSEE AND KENTUCKY.

#### ACTS OF TENNESSEE AMENDING CHARTER.

##### 1. Charter amended, stockholders not to pay more than one per cent. of subscription, when.

SEC. 2. *Be it further enacted*, That the charter of the Nashville & Northwestern Railroad Company shall be so amended that the stockholders shall not be required, upon subscribing, to pay more than one per cent. of their subscriptions, and not that unless required by the commissioners. (Acts Tenn., 1851-2, ch. 292, sec. 2; passed February 27, 1852.)

This was re-enacted during the same sitting of the legislature, with the addition that the acts of any three of the commissioners at any one place may be valid without the concurrence of the whole board. Acts 1851-2, ch. 285, sec. 12; passed February 28, 1853.



**2. Charter amended; may build branch road from Huntington to Jackson; franchises, right of way of branch.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the Nashville & Northwestern Railroad Company be, and is hereby, authorized to construct a branch road from the town of Huntington, in Carroll county, to a connection with the Mississippi Central & Tennessee and the Mobile & Ohio Railroad, at the town of Jackson, or with the Memphis & Ohio Railroad, or at any point the company may determine and elect, in Madison county.

SEC. 2. That in the construction of said branch road the Nashville & Northwestern Railroad Company shall be entitled to all the rights and benefits conferred <sup>Powers of branch road.</sup> upon the Mississippi Central and Tennessee Company by the seventh section of an act passed February 8, 1854, ch. 131.

SEC. 3. That in securing the right of way for said branch road, constructing the roadbed and bridges, and erecting depots and other necessary buildings, and operating the same, the said Nashville & Northwestern Railroad <sup>Construction, etc.</sup> Company shall be entitled to all the rights, powers, and privileges, and subject to all the liabilities and restrictions provided and imposed in its original charter for the regulation of its main line of road.

SEC. 4. That this company shall be subject to such general laws as now or may hereafter be enacted for the government of railroad companies. (Acts Tenn., 1865-6, ch. 91, p. 274; passed May 22, 1866.

**3. Charter amended; allowed to commence work where and how; time to complete extended; drawbridge across Tennessee river allowed; subscriptions for stock in regulated.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the forty-second section of an act entitled "An act to charter the Nashville & Northwestern Railroad," passed January, 1852, be so amended as to read as follows: That the president and board of directors of the Nashville & Northwestern Railroad Company may commence the work

**May commence work where.** on said road where it intersects the Mobile & Ohio Railroad, in Obion county, Tennessee, at the point where the cheapest and most practicable route to the Madrid bend will strike said Ohio & Mobile Railroad, to be ascertained by a sworn engineer, and prosecute their work eastwardly from that point, instead of commencing on the Mississippi river, as required in the forty-second section of their charter, and also on both banks of the Tennessee river, if, in the opinion of the board of directors, it is expedient to do so; *Provided*, That no call shall be made on the stockholders residing west of the Mobile & Ohio Railroad until that part of the Nashville & Northwestern Railroad lying west of the Mobile & Ohio Railroad is under contract; *And provided further*, That this amendment shall not be binding on the company or become a part of its charter until the same is ratified at a general meeting of the stockholders in said company (called for the purpose by order of the board of directors), by a vote of a majority in the interest of the stockholders, counting the votes according to the basis fixed in the charter of said company in the election of directors.

**Extension of time.** SEC. 2. That the thirty-seventh section of an act entitled "An act to incorporate the Nashville & Northwestern Railroad Company," passed January 22, 1852, ch. 74, be so amended as to allow said railroad company three years from the passage of this act to commence their work, and four years from the passage of this act to complete a section of "thirty miles" ready to receive the iron rails, and that said company shall receive the state aid as provided by the act of February 11, 1852, entitled "An act to establish a system of internal improvements in this state;" *Provided*, That the Nashville & Northwestern Railroad shall be located through Dickson county.

**Bridge.** SEC. 3. That the forty-third section of the charter of the Nashville & Northwestern Railroad Company be so amended as to allow said company to construct a drawbridge across the Tennessee river, so as not to obstruct the free navigation of said river.

SEC. 4. That the said company be, and they are hereby, allowed to receive subscriptions for three-quarters, half, and quarter shares of stock, and issue certificates for such fractional shares of stock. (Acts Tenn., 1853-4, ch. 312; passed February 1, 1854.)

Fractions  
of stock.

**4. Charter amended, fixing western terminus; may purchase or lease Hickman & Obion Railroad, how, or buy stock in; stockholders in Henry county and west of Mobile & Ohio provided for.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the charter of the Nashville & Northwestern Railroad Company be, and the same is hereby, so amended as to fix the western terminus of said road at the point of its intersection with the Mobile & Ohio Railroad.

SEC. 2. That the said Nashville & Northwestern Railroad Company is hereby authorized to purchase the Hickman & Obion Railroad,\* or three-fourths of the stock in said company, and obtain a lease of said road for a period of not less than one thousand years, and operate it as their own railroad, on such terms as the said two companies may agree on, and that said Hickman & Obion Railroad Company is hereby authorized and empowered to make such sale and transfer or lease.

Purchase or  
lease Hick-  
man & Obion  
Railroad.

SEC. 3. That whenever the Nashville & Northwestern Railroad Company shall have purchased said Hickman & Obion Railroad Company, or three-fourths of its stock, and taken a lease of said road for not less than a thousand years, and graded and bridged a section of thirty miles from the Mississippi river at Hickman eastwardly, on a section extending from said river to Dresden, and provided the cross-ties for the same, the coupon bonds of the State of Tennessee shall issue to the Nashville & Northwestern Railroad Company at the rate of ten thousand dollars per mile on so much of said section as may lie within this state, on the same terms and conditions in all other respects as state bonds are issued to other railroad companies under the internal improvement laws of this state.

SEC. 4. That whenever said Nashville & Northwestern Rail-



road Company shall have graded and bridged an additional section of not less than ten miles eastwardly from the  
**State aid.** Mobile & Ohio Railroad, and prepared the cross-ties for the same, an issue of ten thousand dollars per mile of state bonds shall be made to said company, to iron and equip said section; and so on for each additional section of ten miles, as is provided by act of the general assembly of 1853-54.

The word "eastwardly" in the above section was struck out by the Acts of 1855-56, ch. 186, p. 326, sec. 35.

**SEC. 5.** That the stockholders in Henry and the stockholders living west of the Mobile & Ohio Railroad, be, and they are hereby, released from their subscriptions  
**Stockholders released.** to the Nashville & Northwestern Railroad Company. (Acts Tenn., 1855-56, ch. 2, p. 3; passed November 16, 1855.)

1. \*The Hickman & Obion Railroad Company was chartered by the Acts Tenn., 1853-54, ch. 307, p. 685, and by Acts Ky., 1853-54, ch. 781, p. 348, to extend from Hickman, Ky., to the Mobile & Ohio Railroad, in Obion county, Tenn. Sec. 25 of its charter also gave it power to construct its road to Dresden, Tenn., in the event the Nashville & Northwestern Railroad Company did not build that far west. The Nashville & Northwestern Railroad Company built to Union City, however, and then purchased the Hickman & Obion Railroad. The Tennessee and Kentucky charters of the latter road were identical.

2. Under this authority the Nashville & Northwestern Railroad Company purchased the Hickman & Obion Railroad. The authority was also given by the State of Kentucky by Acts 1855-56, ch. 142, p. 281.

3. For convenience, the charter of the Hickman & Obion Railroad Company is inserted here. and is as follows:

**4. Original charter of the Hickman & Obion Railroad Company.**  
 (Acts Tennessee, 1853-4, p. 685.)

**SECTION 1. Incorporation, name, route, general powers.**—*Be it enacted by the General Assembly of the State of Tennessee,* That the president, directors, and stockholders of the joint stock company already formed to build a railroad from the town of Hickman, in the State of Kentucky, to the Mobile & Ohio railroad track in the county of Obion, in the State of Tennessee, in Houser Valley, be, and they are hereby, constituted a corporation and body politic, by the name and style of the Hickman & Obion Railroad Company, and by the said corporate name shall be authorized to sue and be sued, and to buy, receive by gift, hold, sell, and convey real and personal estate as hereinafter provided; make contracts, make by-laws, and do all other acts properly incident to a corporation, and necessary and proper in the transaction of the business for which said corporation is constituted; and to have and use a common seal, and the same to alter or destroy at its pleasure, and have perpetual succession of members.

**Incorporation.**—The Hickman & Obion Railroad Company was also chartered in the State of Kentucky by Acts 1853-4, ch. 781, p. 348. The Kentucky charter will not be set out, as it is identical with this.

**SEC. 2. Capital, value of shares.**—*Be it enacted.* That the said corporation may increase the corporate stock thereof to thirty thousand shares, at one hundred dollars each; and the president and directors shall have the power of receiving subscriptions of stock to that amount at any time according to their discretion.

This company having been purchased by the Nashville & Northwestern Railroad Company, which in turn has been purchased by the Nashville, Chattanooga & St. Louis Railway, the amount of capital and value of shares is now controlled by the latter company as representing the entire system. See charter of Nashville & Chattanooga Railroad Company, ch. 1, herein.

**SEC. 3. Directors, number, how elected, scale of voting.**—*Be it enacted.* That the affairs of the company shall be managed by a board of directors, to consist of eleven, and shall be chosen by the stockholders from their own body, each stockholder casting one vote for each share he may possess; and the president of the company shall be elected by the directors from their own members, in such manner as the regulations of the corporation shall prescribe.

See sec. 8 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 4. Temporary president and directors to act until when.**—*Be it enacted.* That the president and directors already elected and now conducting the business of said company, to wit, G. W. Gibbs, G. W. L. Marr, Sauney Burress, Olion F. Young, E. B. Fuqua, W. Robinson, Burgess R. Noles, A. D. Kinman, Robert Matson, Ferdinand Wilson, and J. F. Mares, shall continue to transact the business until the third of August, 1854, with full power to fill vacancies, and until there shall be another board elected and organized under the regulations prescribed by the by-laws of said corporation, and the elections thereafter shall be annual.

**SEC. 5. Vacancies in board, how filled.**—*Be it enacted.* That the board of directors may fill all vacancies which may occur during the time for which they were elected, and, in the absence of the president, may fill his place by electing one of their number president *pro tempore*.

See sec. 10 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 6. Contracts binding without seal.**—*Be it enacted.* That all contracts and arrangements authenticated by the president of the board, shall be binding on the company, whether with or without seal, or such other mode of authentication as the by-laws may prescribe.

See sec. 11 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 7. Liability of directors.**—*Be it enacted.* That the board of directors shall not exceed in their contract the capital stock of the corporation, and of the funds which the company may have borrowed and placed at the disposal of the board; and, in case they shall do so, the president and directors who may be present at the meeting at which such contract or contracts, so exceeding the amount aforesaid, shall be made jointly and severally liable for the excess, both to the contractor or contractors and to the corporation; *Provided*, That anyone may discharge himself from such liability by voting against such contract or contracts, and causing said vote to be entered on the books of the company, and giving notice thereof to the next general meeting of the stockholders.

See sec. 12 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 8. Exclusive transportation, transportation charges.**—*Be it enacted.* That the said company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, and produce over said road by them to be constructed; *Provided*, That the cost of transportation or conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles and ten cents per cubic foot on articles of measurement for every hundred miles, and five cents a mile for every passenger; *And provided*, That said company, when they sit, may farm

out their rights of transportation on said road, subject to the rules above mentioned.

See notes to sec. 14 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 9. Installments, forfeiture.**—*Be it enacted*, That the board of directors may call for the payment of the capital stock at the rate of not more than ten dollars on each share for every sixty days; and twenty days' notice shall be given in some newspaper of such call; and a failure to pay or secure to be paid, according to the rules of said corporation, any of the installments so called as aforesaid, shall induce a forfeiture of the share or shares on which default shall be so made, and payments thereon, and the same shall vest in said company, but may be restored to the owner or owners by the board of directors, if they deem proper, on the payment of all arrears on such share or shares, and legal interest thereon; or the directors may have the forfeiture after thirty days' default, and save the stockholder for the installments due, at their discretion.

**SEC. 10. Transfer of shares.**—*Be it enacted*, That the stock of said company may be transferred in such manner and form as may be prescribed by the by-laws of said company.

See sec. 16 of charter of the Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 11. Directors to make annual reports, may call meetings.**—*Be it enacted*. That the board of directors shall, once in each year, make a full report of the state of the company's affairs to the stockholders at a general meeting, and shall have full power to call a general meeting of the stockholders whenever the board may deem it expedient.

**SEC. 12. Lands may be purchased for what.**—*Be it enacted*, That the said company may purchase, have and hold in fee, or for a term of years, any lands, tenements, hereditaments which may be necessary for said road, or appurtenances thereof, or for the erection of depositories, store-houses, or for workshops or foundries, to be used for said company, or for procuring timber, stone, or any other materials necessary for the construction of said road or its appurtenances, or for effecting transportation, or for other purposes.

**SEC. 13. Crossings of roads and water courses.**—*Be it enacted*, That said company shall have the right, when necessary, to construct said road across or along any public road or water course, provided the roads, and the navigation of such, shall not be obstructed.

**SEC. 14. Right of way, how condemned.**—*Be it enacted*. That when any lands or right of way may be required by said company for the purpose of constructing said road, and for want of agreement as to the value thereof, or for any cause, the same cannot be purchased from the owner or owners, the same may be taken at valuation by five commissioners, or a majority of them, to be appointed by the circuit court of the county where said land or right of way is situated, and the said commissioners, before they shall act, shall severally take an oath before some justice of the peace, faithfully and impartially to discharge the duty assigned them; and, on making said valuation, the commissioners\* the actual loss or damage to the owner or owners in consequence of the land being taken and the right of way surrendered. The proceedings of said commissioners shall be returned, accompanied with a full description of the land or right of way, under their hands and seals, of a majority of the said commissioners, to the court from whence the commission issued, there to remain a matter of record. In case either party shall appeal from the decision of the commissioners to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged therewith at the same term, or as soon



as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial be granted, and the land or right of way so valued by the commissioners or verdict of a jury, shall vest in said company so soon as the amount of such valuation be paid, or a tender and refusal thereof, to the extent of one hundred feet wide. When there may be an appeal by either party, the same shall not prevent the works intended to be constructed from proceeding; but when the appeal is taken by the company, they shall enter into bond and security to the opposite party, approved by the clerk, in double the amount of the valuation and interest, in case the same shall be confirmed, and, in case it be reversed, then to pay the amount of the valuation thereafter to be made by the jury and confirmed by the court; *Provided*, That when the land cannot be had by gift or purchase, the operations of the work are not to be hindered or delayed during the pendency of any proceedings to assess its value as aforesaid, nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

1. \*The wording of the above section is exactly as it appears in the Acts of 1853-4, p. 685. There was something evidently left out.

2. See notes to secs. 24 and 25 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 15. Intrusion, punishment for.**—*Be it enacted*, That if any persons shall intrude upon said railroad, or any part thereof, or the rights and privileges connected therewith, without the permission or contrary to the will of said company, he, she, or they shall forthwith forfeit to the said company all the vehicles that may be intruded on said road, and the same may be recovered by suit at law; and the person or persons so intruding may also be indicted for a misdemeanor, and upon conviction fined and imprisoned by any court of competent jurisdiction.

**SEC. 16. Obstruction a nuisance.**—*Be it enacted*, That every obstruction to the safe and free passage of vehicles on said road shall be deemed a public nuisance, and, as such, may be abated by an officer, agent, or servant of the company; and the person causing such obstruction may be indicted and punished for erecting a public nuisance before any competent jurisdiction.

The language of the above section is exactly as it appears in the act. The word *court*, in the last line, was evidently unintentionally left out.

**SEC. 17. May establish warehouses and charge storage, when.**—*Be it enacted*, That said company shall have the right to take at the storehouse they may establish or rent to the road, all goods, wares, merchandise, and produce intended for transportation; prescribe the rules of priority, and charge and receive such just and reasonable compensation for storage as they, by rule, may establish, which they shall cause to be published (or may be agreed upon with the owner), which may be distinct from the charges of transportation, provided the said company shall not charge or secure storage on goods, wares, or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

**SEC. 18. Dividends, when paid.**—*Be it enacted*, That the profits of the company, or so much thereof as the board of directors may deem advisable, shall, when the officers\* of the company will permit, be semiannually divided among the stockholders, in proportion to the stock each may hold.

\*The word "officers" in the above section evidently was intended for "affairs." The section is inserted exactly as it appears in the original act.

**SEC. 19. Banking prohibited, may insure.**—*Be it enacted*, That the said company is hereby expressly prohibited from carrying on any banking operations, but may effect insurance upon lives and property transported on said road.

**SEC. 20. Company must construct crossings.**—*Be it enacted*, That whenever, in the construction of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way so as not to impede the passage or transportation of persons or property along the same; or where it shall be necessary, through the land of any individual, it shall be their duty to provide for such individual a proper wagon way or ways across said road.

**SEC. 21. Right of way, additional powers.**—*Be it enacted*, That the said company shall have the right of way for said road from the line of the State of Kentucky south to the terminus thereof; and they shall have such additional power as may be necessary and convenient for the successful execution of the powers granted in this charter, and for the successful construction and management of the work.

**SEC. 22. Exemption of officers, etc., from road, jury, and military duty.**—*Be it enacted*, That the president and directors, clerks, agents, officers, and servants of said company shall be exempt from military duty, except in case of invasion or insurrection, and shall also be exempt from serving on juries and working on public roads.

**SEC. 23. May own slaves.**—*Be it enacted*, That the said company shall have full power to purchase and own such number of slaves as shall be necessary for the construction of said road, and for keeping the same in repair.

**SEC. 24. Exemption from taxation.**—*Be it enacted*, That the capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of said road, and no longer.

**SEC. 25. May extend road to Dresden, when and how.**—*Be it enacted*, That said company shall have power, and they are hereby authorized, to extend their road to the town of Dresden, in the county of Weakley, or connect with the Nashville & Northwestern road at such point as may be convenient in the county of Weakley or Obion, at their discretion, which connection, if made, shall be regulated by the provisions of the thirty-eighth section of the charter of the said Nashville & Northwestern road, and, in the event said extension shall be determined upon, then the company shall be authorized to increase their capital stock to the amount of five hundred thousand dollars, and said company shall have, possess, and enjoy the same rights and privileges and be subject to the same rules, regulations, and liabilities upon said extension as are hereinbefore prescribed in the charter for the other portion of said road; *Provided*, That said road shall not be extended to the town of Dresden only in the event of the failure of the Nashville & Northwestern Railroad Company to build their road, as required by law, or with the consent of said company. (Acts Tenn., 1853-54, p. 685; passed December 20, 1853.)

The Nashville & Northwestern Railroad Company built its road to Union City, and hence this section was inoperative. The Nashville & Northwestern Railroad Company then purchased this road.

## 5. Charter amended; may unite and consolidate with or lease Mississippi Central Railroad Company, how; may also unite with any company connecting with it in direction of New Orleans.

**SECTION 1.** *Be it enacted by the General Assembly of the State of Tennessee*, That the Nashville & Northwestern Railroad Com-

pany be, and the said company is hereby, authorized at any time hereafter to unite and consolidate with the Mississippi Central Railroad Company, upon such terms and conditions as may be agreed upon by the board of directors of each company, the two companies to become thereafter one company, with all the corporate powers, rights, and privileges conferred by their respective charters where there is no conflict between them, and with the corporate powers, rights, and privileges of the charter of Nashville & Northwestern Railroad Company when there is any conflict.

SEC. 2. That the united company shall be known by the name and style of the Nashville & Mississippi Railroad Company, or such other name as may be agreed upon by the directors of the united company.

Nashville &  
Mississippi  
Railroad Com-  
pany.

SEC. 3. That upon the union of said companies the stockholders of each shall become stockholders in the common road, according to the several amounts of their stock, or as may be agreed upon; and immediately after such union the stockholders shall, at a general meeting, to be called by the president and directors of the Nashville & Northwestern Railroad Company, elect one board of directors for the new company, under such rules and regulations, and in such manner as the stockholders at the general meeting shall prescribe.

SEC. 4. That if a union of the new company is not effected, as above provided, the Nashville & Northwestern Railroad Company be, and the said company hereby is, authorized to lease the Mississippi Central Railroad for such a length of time, and upon such terms and conditions, as may be agreed upon by the board of directors of each company, and after such lease to run, use, and manage the said road so leased, whether in this or any other state, under and with all the corporate powers, rights, and privileges, and subject to the limitations and restrictions of the charter of the company whose road is leased.

May lease it.

SEC. 5. That the said Nashville & Northwestern Railroad Company, or the united company, as above, is also further authorized to unite with any other company

May unite  
with any com-  
pany.



whose road may connect with it in the direction of New Orleans, in the State of Louisiana, upon the same terms and conditions and in the same way as above provided, so as to form a continuous line of railroad to or in the direction of New Orleans. (Acts Tenn., 1859-60, ch. 177; passed March 22, 1860.)

**6. Charter amended; may unite and have common track with Memphis, Clarksville & Louisville Railroad, where and how; may change route, may consolidate with Mississippi & Tennessee Central Railroad, how.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the Nashville & Northwestern Railroad Company and the Memphis, Clarksville & Louisville Railroad Company be authorized to unite their roads and make a common track for such distance and upon such terms as the said companies, through their presidents and directors, may agree upon, and may build a common bridge across the Tennessee river, and, if said companies unite, they shall be entitled to ten thousand dollars per mile of the state aid now allowed by law to said two companies for the distance thus run in common, and the whole of the state aid for the bridge across Tennessee river.

SEC. 2. That the Nashville & Northwestern Railroad Company be authorized to change the location of their line.

May change location.

SEC. 3. That nothing in this act shall be so construed as to give the Nashville & Northwestern Railroad Company more than ten thousand dollars per mile on any portion of said road run singly, and the same amount on such portion of consolidated road.

SEC. 4. That the Mississippi and Tennessee Central Railroad may consolidate with the roads mentioned in the first section of this act, upon such terms and at such place as may be agreed upon by the board of directors of the consolidated roads mentioned in the first section of this act; *Provided*, If the Nashville & Northwestern Railroad is changed from its present location in the county of Carroll, the stockholders shall be released

from the payment of any more of the calls for stock from said company; *And provided*, That the consolidated roads shall receive no more state aid than ten thousand dollars per mile, and the bridge aid already appropriated by law to the two first roads named in this act. (Acts Tenn., 1857-8, ch. 89; passed February 27, 1858.)

**7. Nashville & Northwestern Railroad to adopt gauge of Nashville & Chattanooga Railroad Company; may run cars to depot of Central Trunk Railroad, how; charter amended, stockholders to pay only one per cent. cash in subscribing.**

SEC. 10. *Be it enacted*, That the Tennessee Central Railroad Company, the Memphis & Nashville Railroad Company, and the Northwestern Railroad Company, shall be required to construct their tracks respectively with the same gauge as the Nashville & Chattanooga Railroad and the Central Trunk Railroad Company, and each of said companies shall have the right to pass their locomotives and train of cars to the depot of the Central Trunk Railroad, which may be established on either side of the Tennessee river, without charge from said Central Trunk Railroad Company, and shall have the same privilege of connecting with their road as is granted in the fortieth section of the Nashville & Chattanooga Railroad charter, and the privilege shall be reciprocal between the several companies.

SEC. 11. [Relates to other roads.]

SEC. 12. *Be it further enacted*, That the charter of the Nashville & Northwestern Railroad be so amended that the stockholders, upon subscribing, shall not be required to pay more than one per cent. of their subscriptions, and not that unless required by the commissioners, and that the acts of any three of the commissioners, at any one place, may be valid without the concurrence of the whole board. (Acts Tenn., 1851-2, p. 531; passed February 28, 1852.)

**ACTS OF TENNESSEE RELATING TO NASHVILLE & NORTHWESTERN RAILROAD COMPANY.**

**1. To issue stock to taxpayers for taxes paid to provide interest on bonds issued by this company, when.**

SECTION 1. That . . . , the Northwestern Railroad Company, . . . , shall, by and with the consent of the county court of Davidson county, be required to issue stock to the taxpayers of said county for the amount of the annual tax which has already and may hereafter be paid by said taxpayers to provide for the interest on the bonds issued by said county for said railroads, on presentation of the tax receipts for the respective railroads; said tax receipts shall be negotiable by indorsement, and no stock shall be issued for a less amount than one share, provided said railroad company shall not be required to issue stock for said tax receipts until the first dividend is ready to be made, at which time, or any time thereafter, shall issue the stock. (Acts Tenn., 1855-6, ch. 104, p. 117; passed February 14, 1856.)

**2. Extra time given to get stock and prepare road.**

SEC. 7. *Be it further enacted*, That the Nashville & Northwestern Railroad Company shall have the further time of two years in which to get the stock and prepare a section for the iron, as required by law, provided this shall not interfere with the rights of stockholders. (Acts Tenn., 1857-8, ch. 60, p. 128, sec. 7; passed February 13, 1858.)

**3. Resolution directing the governor to surrender the Nashville & Northwestern Railroad Company to its president and directors.**

*Be it resolved by the General Assembly of the State of Tennessee*, That the governor be, and he is hereby, instructed to immediately surrender the Nashville & Northwestern Railroad to the president and directors of said company, provided nothing in this resolution shall be construed as to vitiate in any manner the indebtedness of the state in or upon said railroad. (Acts Tenn., 1868-9, ch. 34, p. 383; adopted December 3, 1868.)



#### **4. Resolution directing inquiry concerning application of bonds by Nashville & Northwestern Railroad Company.**

This resolution directed an examination to be made as to whether the receiver of the Nashville & Northwestern Railroad used the bonds on the road. (Acts Tenn., 1868-9, p. 379; passed November 27, 1868.)

#### **5. State aid to Nashville & Northwestern Railroad Company.**

Many acts of the legislature of the State of Tennessee were passed authorizing state aid to be granted to the Nashville & Northwestern Railroad for the purpose of building and equipping its road. The state aid was extended by having the governor indorse the bonds of the road on behalf of the state. These acts are quite lengthy, and are so seldom required that, for the purpose of space and economy, it is not deemed advisable to insert them in full in this compilation, but simply to refer to the act and page where they can be found. Below will be found all the acts relating to this subject, set out in the order of their passage:

1. Acts 1851-52, ch. 151, sec. 10. Governor authorized to issue coupon bonds for an amount not exceeding \$8,000 per mile on certain conditions. For conditions, see act. But see section 15 of same act; also section 19 of same act. See, also, Acts 1853-54, ch. 132, sec. 7.

2. Acts 1853-54, ch. 131, sec. 1. State aid granted to the extent of \$10,000 a mile.

3. Acts 1855-56, ch. 120, sec. 7, p. 143. Governor authorized to issue bonds to an amount not exceeding \$100,000, a part to be used in building bridges across Obion river, Spring creek, Big Sandy, Turnbull, and Harpeth rivers.

4. Acts 1865-66, ch. 14, p. 33. Governor authorized to issue bonds to Nashville & Northwestern Railroad Company to the amount of \$300,000.

5. Acts 1865-66, ch. 95, sec. 2. Governor authorized to issue bonds to amount of \$200,000.

6. Acts 1866-67, ch. 56, sec. 26. Governor authorized to indorse bonds to the extent of \$125,000.

7. Acts 1866-67, ch. 12, p. 11, sec. 3. Governor of state authorized to issue bonds to Nashville & Northwestern Railroad Company to the extent of \$200,000.

8. Acts 1867-68, ch. 17, sec. 11, p. 14. Governor authorized to issue bonds to the Nashville & Northwestern Railroad Company to the amount of \$350,000. Same act authorized governor to issue \$200,000 of bonds more to said road on its extension from Huntingdon to Jackson.

All of these acts were not taken advantage of.

**6. Nashville & Northwestern Railroad Company allowed to run cars upon tracks of Nashville & Memphis Railroad Company, and Memphis, Clarksville & Louisville Railroad Company, how.**

SEC. 7. . . . It is further provided, that the Nashville & Northwestern Railroad Company, from the point of intersection either with the Nashville & Memphis Railroad Company, or the Memphis, Clarksville & Louisville Railroad Company, shall have the same right, power, and privilege to run their cars upon the tracks of either of said roads as is provided in the act chartering the Memphis & Charleston Railroad Company at the point of intersection of said company with the Nashville & Chattanooga Railroad Company; *And provided also*, That the subscriptions made to the Nashville & Northwestern Railroad Company between Nashville and the Tennessee river shall be expended on that part of the road until finished, and the subscriptions west of the Tennessee river shall be expended between the Tennessee and Mississippi rivers until the road is there finished; and the Nashville & Northwestern Railroad Company shall have, from the passage of this act, four years within which to complete the first thirty miles of said road, as provided by the act of February 11, 1852. (Acts Tenn., 1853-54, ch. 132, sec. 7; passed December 16, 1853.)

## DECREES.

**Chancery court amendment to charter of Nashville & Northwestern Railroad Company; name changed; other amendments.**

NASHVILLE &amp; CHATTANOOGA RAILROAD COMPANY, EX PARTE.

IN CHANCERY AT NASHVILLE, TENN.

Petition for change of name of, and amendments to, the charter of the Nashville & Northwestern Railroad Company, No. 7109.

This cause was heard this fourteenth day of May, 1872, before the Honorable Edward H. East, chancellor, presiding in the chancery court for the county of Davidson, State of Tennessee, upon the petition filed in this cause on March 9, 1872 (enrolled, p. 285, book No. 1), when it appeared to the court:

That on March 11, 1872, the clerk and master of this court caused a publication to be made for thirty days in the *Republican Banner*, a newspaper published in the city of Nashville, Tennessee, which publication was in the words following:

No. 7109.

IN CHANCERY AT NASHVILLE.

STATE OF TENNESSEE.

OFFICE CLERK AND MASTER CHANCERY COURT.

NASHVILLE, March 11, 1872.

WHEREAS, The Nashville & Chattanooga Railroad Company, on March 9, 1872, filed its petition in the chancery court at Nashville, praying that it, as purchaser of the Nashville & Northwestern Railroad Company; be substituted to all rights, privileges, and immunities, and subject to all the liabilities of the act of incorporation under which said Nashville & Northwestern Railroad Company was organized, and the acts amendatory thereof, and that the name of said company be changed to, and be hereafter known as, the "Nashville, Memphis & St. Louis Railway," and that the charter granted to said Nashville & Northwestern Railroad Company be ordered and changed, and that a decree be pronounced by said court granting said alterations, changes, and amendments, which are as follows, viz. :



1. For the purpose of establishing and maintaining a communication by railroad between Nashville and the Mississippi river, the formation of a company is hereby authorized, which shall be a body corporate by the name and style of the "Nashville, Memphis & St. Louis Railway," and by this name shall be capable of buying, receiving by gift, holding, selling, and conveying real and personal estate, making contracts, suing and being sued, making by-laws, and doing all other acts, properly incident to a corporation, and necessary and proper to the transaction of the business for which it is incorporated, and to have and use a common seal, which it may alter or destroy, at its pleasure, and have perpetual succession of members.

2. The capital stock of said company shall consist of eighteen thousand shares of one hundred dollars each, and the capital stock may be increased at any time by the board of directors, two-thirds of the number of directors agreeing thereto, to such an amount as the board of directors may determine.

3. The affairs of said corporation shall be managed by the board of directors, for the time being, of the Nashville & Chattanooga Railroad Company, by which the president and such other officers, as may be determined by the by-laws, shall be elected or appointed, as may be prescribed by the by-laws.

4. All contracts authenticated by the board shall be binding on the corporation without seal, and such other modes of authentication may be used as the by-laws may prescribe.

5. Said corporation shall have exclusive right of transportation or conveyance of persons, goods, or merchandise and produce over the railroad by it controlled and managed or constructed. The cost of transportation or conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement, for every hundred miles, and five cents per mile for every passenger, and said corporation may farm out its rights of transportation subject to said rates.

6. The stocks of said company may be transferred in such manner and form as may be directed by the by-laws of said corporation.

7. Stockholders may vote in person or by proxy, and, in voting on all questions that may be submitted to the decision of the stockholders, such stockholders shall be entitled to one vote for each share of stock owned by him or her.

8. The said corporation shall possess and enjoy all the rights, privileges, and immunities to which the Nashville & Northwestern Railroad Company are or were entitled by sections twenty, twenty-one, twenty-two, twenty-three, twenty-four, twenty-five, twenty-six, twenty-seven, twenty-eight, twenty-nine, thirty, thirty-one, thirty-two, thirty-three, of the Acts of the general assembly of the State of Tennessee, ch. 76, passed the twenty-second of January, 1852, entitled an "Act to incorporate the Nashville & Northwestern Railroad Company."

9. The capital stock of said corporation shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the formation of said corporation.

10. The said corporation may construct such branches and extensions of the present line of railroad as may from time to time be determined by its board of directors.

11. The board of directors may, from time to time, two-thirds of all the directors thereof agreeing thereto, cause to be issued the bonds of said corporation for such amounts, not exceeding twenty thousand dollars per mile of the entire railroad operated and controlled by it, as may be necessary, in the opinion of said directors, to carry into successful operation the objects and purposes of said corporation.

The board of directors of said corporation may, two-thirds of all the directors agreeing thereto, extend its line of railroad to such points as may be determined by said board, and for this purpose may acquire, by purchase or lease, other railroads, as may from time to time be determined by said board.

It is therefore ordered that all persons who desire to resist the granting of said amendment and alteration to said charter, as above indicated, or to the prayer of the petition, do make their appearance herein, on or before the first Monday in April

next, 1872, and then and there show cause, if any they have or can, why the prayer of said petition should not be granted and said charter amended, and that a copy of this order be published for thirty days in the *Nashville Republican Banner*.

A copy attest:      NATHANIEL BAXTER, JR.,  
FOGG, WHITESIDES & FRIZZELL,      *Clerk and Master.*  
                                 *Solicitors for Petitioners.*

It also appeared that no person has appeared to show cause why the prayer of said petition should not be granted. It also appeared that under decree pronounced by this court, in the cause therein pending of the *State of Tennessee v. The Edgefield & Kentucky Railroad Company and others*, the petitioner, the Nashville & Chattanooga Railroad Company, became the purchaser of the franchises and property, and of the interest of the state in the Nashville & Northwestern Railroad Company, incorporated by the general assembly of Tennessee, and operating a railroad from Nashville, in said state, to Hickman, in the State of Kentucky, and that the petitioner desires that the name of said Nashville & Northwestern Railroad Company may be changed as hereinafter provided, and that the privileges granted the said Nashville & Northwestern Railroad Company in the act of incorporation and the acts amendatory thereof, be altered and changed as set forth in said petition, and that petitioner, as purchaser, may be substituted to all the rights and privileges, and subject to all the liabilities of the act incorporating the Nashville & Northwestern Railroad Company.

And the court being satisfied of the propriety of the changes asked for, doth, in pursuance of the powers vested in courts of chancery by par. 22, sec. 15, of ch. 54 of the acts of the gen-

**Vests rights,  
franchises,  
etc., in N. & C.  
R. R. Co.**

eral assembly of the State of Tennessee, approved January 30, 1871, order, adjudge, and decree that the said Nashville & Chattanooga Railroad Company, as purchaser as aforesaid, be, and the same is hereby, substituted to all the rights, privileges, and immunities, and subject to all the liabilities, of the act of incorporation under which the said Nashville & Northwestern Railroad Company was organized, and the acts amendatory thereof, and that the name



of said company be changed to that of the "Nashville, Memphis & St. Louis Railway," and the <sup>Name changed.</sup> privileges granted the same by the acts aforesaid be altered and changed so that, including such portions of said acts of said corporation as are not changed by this decree, the same shall read as follows:

1. **Name, style, and general powers.**—For the purpose of establishing and maintaining a communication by railroad between Nashville, Tenn., and the Mississippi river, the formation of a company is hereby authorized, which shall be a body corporate by the name and style of the "Nashville, Memphis & St. Louis Railway," and by this name shall be capable of buying, receiving by gift, holding, selling, and conveying real and personal estate, making contracts, suing and being sued, making by-laws, and doing all the other acts properly incident to a corporation, and necessary and proper to the transaction of the business for which it is incorporated, and to have and use a common seal, which it may alter and destroy at its pleasure, and have perpetual succession of members.

2. **May increase capital stock.**—The capital stock of said company shall consist of eighteen thousand shares of one hundred dollars each, and the capital stock may be increased at any time by the board of directors, two-thirds of the entire number of directors agreeing thereto, to such an amount as the board of directors may determine.

3. **May be managed by Nashville & Chattanooga Railroad Company.**—The affairs of said company shall be managed by the board of directors for the time being of the Nashville & Chattanooga Railroad Company, by which the president and such other officers as may be determined by the by-laws shall be elected or appointed as may be prescribed thereby.

4. **Contracts of president binding without seal.**—All contracts authenticated by the president of the board shall be binding on the company without seal, and such other mode of authentication may be used as the by-laws may prescribe.

5. **Rates of toll and rights relating thereto.**—Said company shall have the exclusive right of transportation or conveyance

of persons, goods, and merchandise and produce over the railroad by it controlled and managed or constructed. The cost of transportation or conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles and ten cents per cubic foot on articles of measurement for every hundred miles, and five cents per mile for every passenger, and said company may farm out its right of transportation subject to said rates.

6. **Stock transferable.**—The stock of said company may be transferred in such manner and form as may be directed by its by-laws.

7. **Manner of voting.**—Stockholders may vote in person or by proxy, and, in voting on all questions which may be submitted to the decision of the stockholders, each stockholder shall be entitled to one vote to each share of stock owned by him or her.

8. **May construct road or branches along public roads and water courses.**—Said company shall have the right, when necessary, to construct its road, or any branch thereof, across or along any public road or water course, provided said road and the navigation of such water course shall not be thereby obstructed.

9. **May purchase bridges and turnpikes.**—Said company may purchase, have, and hold any bridge or turnpike or other road over which it may be necessary to pass, and, when such purchase is made, to hold the said bridge or turnpike, or other road, on the same terms and with all the rights which belong to the individual or corporation from which such purchase may be made.

10. **Right of way, how acquired.**—When any lands or right of way may be required by said company for the purpose of constructing its road or any branch thereof, and for want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner, the same may be taken at a valuation to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated, and the said commissioners, before they act, shall severally take an oath before some justice of the peace, faithfully and impartially to discharge the duties assigned them. In making

the said valuation, the said commissioners shall take into consideration the loss or damage which may occur to the owner of the land in consequence of the land being taken or the right of way surrendered, and also the benefit and advantage he, she, or they may receive from the erection or establishment of the railroad or work, and shall state particularly the nature and amount of each, and the excess of loss and damage over and above the benefit and advantage, shall form the measure of valuation of the said land or right of way. The proceedings of said commissioners, accompanied with a full description of the said land or right of way, shall be returned, under the hands and seals of a majority of the commissioners, to the court from which the commission issued, there to remain a matter of record. In case either party to the proceeding shall appeal from the valuation to the next term of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, which shall be charged therewith at the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties unless a new trial shall be granted, and the lands or right of way so valued by the commissioners or jury shall vest in the said company in fee simple so soon as the valuation shall be paid, or, when refused, may be tendered to the extent of two hundred feet wide. When there may be an appeal, as aforesaid, from the valuation of the commissioners by either of the parties, the same shall not prevent the work intended to be constructed from proceeding, but where the appeal is by the company requiring the surrender, it shall be at liberty to proceed with its work only on condition of giving to the opposite party a bond with good surety, to be approved by the clerk of the court where the valuation is returned, in a penalty equal to double the said valuation and interest in case the same may be sustained, and, in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court.

**11. Right of way in absence of contract.**—In absence of any contract with the said company in relation to lands through



which its road or any branch thereof may pass, signed by the owner thereof, or by its agent, or any claimant or person in possession thereof, which may be confirmed by the owner thereof, or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which said road or branch may be constructed, together with a space of one hundred feet on each side of the center of said road, has been granted to the company by the owner thereof, and the said company shall have a good right and title thereto, and shall have, hold, and enjoy the same as long as the same may be used only for the purposes of the road and no longer, unless the person or persons owning the said land [at the time that part of the road which may be on said land] was finished, or those claiming under him, her, or them, shall apply for an assessment of the value of said lands as hereinbefore directed, within five years next after that part of said road was finished; and in case the said owner or owners or those claiming under him, her, or them, shall not, within five years after the said part was finished, apply for such assessment, he, she, or they shall be forever barred from recovering said land, or having any assessment or compensation therefor; *Provided*, Nothing herein contained shall affect the right of *feme covert* or infants, under two years after the removal of their respective disabilities.

This section is a literal copy of sec. 25 of the original charter of the Nashville & Northwestern Railroad Company, and the words placed in brackets were omitted in the decree, and are now supplied for what it is worth.

**12. Intrusion, penalty.**—If any person shall intrude upon the said railroad, or any part thereof, by any manner of use thereof, or of the right and privileges connected therewith, without the permission or contrary to the will of said company, he, she, or they shall forthwith forfeit to the said company all the vehicles that may be intruded on said road, and the same may be recovered by suit at law, and the person or persons so intruding may also be indicted for a misdemeanor, and, upon conviction, fined or imprisoned, or both, by any court of competent jurisdiction.

13. **Malicious injury, how punished.**—If any person shall willfully or maliciously destroy or in any manner hurt, damage, or obstruct the said railroad, or any bridge or any vehicles used for or in transportation thereon, shall be liable to be indicted therefor, and, on conviction, shall be imprisoned not more than six nor less than one month and pay a fine of not less than twenty (\$20) dollars, and shall be further liable to pay all the expenses of repairing the same, and it shall not be competent for any person so offending against the provisions hereof to defend himself by pleading or giving in evidence that he was the owner or agent or servant of the owner of the land where such destruction, hurt, damage, injury or obstruction was done or caused at the time the same was caused or done.

14. **Obstruction a public nuisance.**—Every obstruction to the safe and free passage of vehicles on the said road, or any branch thereof, shall be deemed a public nuisance and may be abated as such by any officer, agent, or servant of the company, and the persons causing such obstruction may be indicted and punished for erecting a public nuisance.

15. **Rates of storage.**—Said company shall have the right to take in the storehouses they may establish all goods, wares, merchandise, and produce intended for transportation, prescribe the rules of priority, and charge and receive such just and reasonable compensation for storage as they, by rules, may establish (which they shall cause to be published) or as may be affixed by agreement with the owner, which may be distinct from the rates of transportation; *Provided*, Said company shall not charge or receive storage on goods, wares, or produce which may be delivered to it at its regular depositories, for immediate transportation, and which the company may have the power of transporting immediately.

16. **Dividends, how paid.**—The profits of the company, or so much thereof as the board of directors may deem advisable, shall, when the affairs of the company will permit, be semi-annually divided among the stockholders in proportion to the stock each may hold.

17. **Banking prohibited, may insure.**—Said company is

hereby expressly prohibited from carrying on any banking operations, but may effect insurance on lives and property transported on the road.

18. **Duty in crossing roads and lands.**—Whenever, in the construction of said road, or any branch thereof, it shall become necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way so as not to impede the passage or transportation of persons or property along the same, or where it shall be necessary to pass through the land of any individual, it shall be the duty of said company to provide for such individual a proper wagon way or ways across said road from one part of his land to another.

19. **Exemption from road and military duty.**—The president, directors, clerks, agents, officers, and servants of said company shall be exempt from military duty, except in cases of invasion or insurrection, and shall also be exempt from serving on juries and working on public roads.

20. **Exemption from taxation.**—The capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer.

21. **May construct branch roads.**—Said company may construct such branches and extensions of its present line of railroad as may from time to time be determined by its board of directors.

22. **Bonds may be issued.**—The board of directors of said company may, from time to time, two-thirds of all the directors thereof agreeing thereto, cause to be issued the bonds of said company for such amounts, not exceeding twenty thousand dollars per mile of the entire railroad operated and controlled by it, as may be necessary, in the opinion of said board of directors, to carry into successful operation the objects and purposes of said corporation.

23. **May purchase, lease, or construct lines.**—The board of



directors of said company may, two-thirds of all the directors thereof agreeing thereto, extend its line of railroad to such points as may be determined by said board, and for this purpose may acquire by purchase or lease other railroads, or construct new lines of railroad as may, from time to time, be determined by said board.

**24. Additional powers.**—Said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted hereby, and for the successful construction and management of the work.

It is further ordered that the Nashville & Chattanooga Railroad Company pay the costs of this proceeding, for which execution may issue, and when the same shall be paid, the clerk and master will issue a certified copy of this decree for registration.

Decree entered in minute book "V," pp. 185–192 of chancery court at Nashville, Tenn., May 14, 1872.

There is no question but that the chancery court had authority to change the *name* of the company as before explained, but, as to the other amendments, see discussion herein of "chancery court amendments." Refer to index.

## ACTS OF KENTUCKY RELATING TO THE NASHVILLE & NORTHWESTERN RAILROAD COMPANY.

### 1. Charter of Nashville & Northwestern Railroad Company granted by the State of Kentucky.

**SECTION 1. Incorporation, general powers.**—*Be it enacted by the Commonwealth of Kentucky*, That an act to incorporate the Nashville & Northwestern Railroad Company, passed by the legislature of the State of Tennessee on the twenty-second of January, 1852, together with the several amendments thereto made by the said legislature of the State of Tennessee, passed February 28, 1852, and February 15, 1854 [this act then sets out the charter of the road, as passed by the legislature of Tennessee, which is omitted here for economy. See Tennessee charter, in preceding chapter], be, and the same are hereby, *re-enacted and adopted, with all the privileges, franchises, pow-*

ers, and responsibilities conferred and granted by said charter, so far as the same are applicable and not inconsistent with the constitution of Kentucky, to enable the said Nashville & Northwestern Railroad Company to continue their line of railway to the city of Hickman, in Fulton county, Kentucky. This act to take effect from its passage. (Acts Ky., 1856; passed March 8, 1856.)

1. This act made the Nashville & Northwestern Railroad Company a domestic corporation of Kentucky.

The fact, however, that the Nashville, Chattanooga & St. Louis Railway subsequently purchased it would not make the latter corporation a domestic one there. The Nashville, Chattanooga & St. Louis Railway is a foreign corporation in Kentucky, though it operates this road, with all its franchises, in that state. For franchise rights, privileges, etc., of this road, see Tennessee charter, in *preceding* chapter.

2. The acts referred to in the above act, as having been passed by the legislature of Tennessee on February 15, 1854, was passed on February 1, 1854.

3. For the two acts referred to above as having been passed by the legislature of Tennessee on February 28, 1852, and February 1, 1854, see Acts of Tennessee relating to Nashville & Northwestern Railroad Company, *preceding*.

4. The above act of Kentucky was amended by act passed February 17, 1868. See act immediately following.

## **2. Charter re-enacted; State of Tennessee given statutory lien on that part of road in Kentucky as security for bonds issued, when.**

SECTION 1. *Be it enacted by the General Assembly of the Commonwealth of Kentucky*, That the act approved March 8, 1856, entitled "An act to incorporate the Nashville & Northwestern Railroad Company," be, and the same is hereby, re-enacted, with all the rights, privileges, and immunities conferred on said company by said act.

SEC. 2. That the statutory lien reserved by the State of Tennessee for the security of the bonds of said state heretofore or hereafter to be issued to said Nashville & Northwestern Railroad Company, and the accruing interest on the roadbed, right of way, grading, bridges, and masonry, upon all the uncollected stock subscribed to such road, and upon the iron rails, chairs, spikes, and equipments on the whole road, superstructure, equipments and rolling stock, as far as completed or acquired, and upon all property owned by the company or incident to or necessary for its business, as

Lien.

well as such property and effects hereafter acquired, as the property and effects now owned and possessed, be, and the same is hereby, extended to the property of said company in the State of Kentucky, or which may hereafter be brought into this state, and the State of Tennessee may enforce its said lien at any time on said property and effects by proper proceedings in the courts of this state, without security, except for costs, and have the same delivered up to it, whether the road is still run by the Nashville & Northwestern Railroad Company, and the affairs of the company managed by said company, or by the state, or some receiver, or other officer appointed by the state authorities, or the courts of Tennessee.

**How lien enforced.**

SEC. 3. That this act shall be and inure as a statutory lien in the State of Kentucky, without either registration or record, upon all the property and effects of every nature and kind now owned or which may hereafter be acquired by said Nashville & Northwestern Railroad Company in favor of the State of Tennessee for the security of its bonds issued to the said company or in aid thereof, and of the interest accruing thereon.

**Statutory lien.**

SEC. 4. Nothing contained in this act shall be construed so as to defeat any *bona fide* lien now held by any citizen of the State of Kentucky on that part of the Nashville & Northwestern Railroad, roadbed, right of way, grading, bridges, and masonry, situate, lying, and being within the territorial limits of the State of Kentucky, except so far as the same may be enhanced in value by bonds hereafter issued to said railroad company by the State of Tennessee. This act to take effect from and after its passage. (Acts Ky., 1868; passed February 17.)

**Exceptions.**

See 7 Bush (Ky.), 118.

### **3. Hickman & Obion Railroad Company authorized to sell their road to Nashville & Northwestern Railroad Company.**

*Be it enacted*, That the charter of the Hickman & Obion Railroad Company be so amended as to authorize the board of direct-



ors of said company to sell their road absolutely to the Nashville & Northwestern Railroad Company of Tennessee; *Provided*, That no sale made by said board shall be binding on the stockholders, unless the same shall be submitted to a special meeting of the stockholders and shall be voted for by a majority in interest of said stockholders. (Acts Ky., 1855-56, ch. 142, p. 281; approved February 9, 1856.)

The Hickman & Obion Railroad Company was chartered by Acts Ky., 1853-54, ch. 781, p. 348, and by Acts Tenn., 1853-54, ch. 307, p. 683. The two acts are identical. See Tennessee charter heretofore inserted in this chapter as a *note* to Acts Tenn., 1855-56, ch. 2, authorizing the Nashville & Northwestern Railroad Company to *purchase* or lease the Hickman & Obion Railroad.

## CHAPTER V.

*THE TENNESSEE & PACIFIC RAILROAD COMPANY.*

## (LEBANON BRANCH.)

The capital stock in this road was purchased by the Nashville, Chattanooga & St. Louis Railway before its purchase of the Winchester & Alabama Railroad, and hence its charter and acts relating thereto are first inserted, though the *deed* to the road was not executed until several months after the execution of the deed to the Winchester & Alabama Railroad.

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—The Tennessee & Pacific Railroad was sold to the Nashville, Chattanooga & St. Louis Railway on October 1, 1877, in pursuance of a resolution of the stockholders of said Tennessee & Pacific Railroad Company, adopted at their convention at Nashville on September 12, 1877, and that of its directors, passed on the first day of October, 1877. The deed to the same is on record in the register's office of Davidson county, Tennessee, in book 58, p. 537. It is also inserted in this compilation. See next chapter.

A resolution had previously been adopted by the Nashville, Chattanooga & St. Louis Railway, September 12, 1877, ratifying the purchase.

Prior to the date of this conveyance the entire capital stock of the Tennessee & Pacific Railroad Company, with possibly a small exception, was owned by the counties of Davidson and Wilson. The majority was owned by Davidson county. This stock was also purchased by the Nashville, Chattanooga & St. Louis Railway Company from said counties, as will fully appear from the records in the county court of Wilson county, in minute book "E," pp. 302-5, and pp. 348-51.

Previous to the purchase of the road and stock by the Nashville, Chattanooga & St. Louis Railway, as above set out, the Tennessee & Pacific Railroad Company had become indebted to the State of Tennessee for bonds indorsed by its governor to aid in its construction. This indebtedness was secured by a

statutory lien or mortgage on the road. On March 28, 1872, the legislature of the state passed an act [Acts 1872, p. 27, ch. 6, ex. ses.], authorizing this indebtedness to be *compromised* upon the payment by the board of directors of said road of \$300,000 in bonds of the state, with coupons since January, 1871, attached, one-fourth cash, or twenty days thereafter, and the balance in one, two, and three years thereafter. The Nashville, Chattanooga & St. Louis Railway, under and by virtue of this act, subsequently settled with the State of Tennessee, paying the \$300,000, as provided therein, and thus secured a clean title to the road. The said Act of 1872 is inserted in the next chapter.

1. **Legality of the purchase of the road.**—The purchase of this railway by the Nashville, Chattanooga & St. Louis Railway was legal. Under the Acts of Tennessee, 1871, ch. 69, which superseded the Acts of 1871, ch. 22, it was provided that "every railroad corporation in this state, whether created under a general or special law, shall have the power to acquire, by purchase or other lawful contract, and have, hold, use, and operate any railroad, with its *franchises*, belonging to any other railroad corporation."

2. **Legality of the purchase of the stock.**—The purchase of this stock by the Nashville, Chattanooga & St. Louis Railway was also legal. Under the Acts of Tenn., 1869-70, ch. 49, sec. 4, all railroad companies of this state were allowed to subscribe for or *purchase* the stock and bonds, or either, of any other railroad company, when their roads connected *directly* or by intervening railroads.

3. **Consideration.**—For the consideration paid for the road, see deed to same, in next chapter.

4. **The ownership of the stock by Wilson and Davidson counties legal.**—By Acts Tenn., 1868-9, ch. 11, p. 93, sec. 29, Wilson and Davidson counties were authorized to subscribe for stock in the Tennessee & Pacific Railroad Company.

**What franchises, etc., passed under this sale.**—In addition to the road and other property conveyed, the deed specifically transferred all the rights, privileges, immunities, *franchises*, and easements of said Tennessee & Pacific Railroad Company to the Nashville, Chattanooga & St. Louis Railway. These rights, privileges, immunities, and franchises are largely set out in the charter of the said Tennessee & Pacific Railroad Company, but it will be noticed that section 15 of said charter also conveys to the company all the rights, easements, and franchises of the *Nashville & Chattanooga Railroad Company*. This being so, the latter company, as a lawful purchaser, is now entitled, on that line of road, to all the rights, privileges,



and franchises contained in its own charter as well as that of the Tennessee & Pacific Railroad Company.

1. The legislature, in granting a charter to one railway, may lawfully confer upon it all the rights, easements, and franchises of another by simply referring to it in the manner that this was done. See 8 Lea, 427.

2. For franchises, etc., contained in charter of Nashville & Chattanooga Railroad Company, see chapter 1. See, also, discussion herein under *Eminent Domain, Right of Way*. Refer to index.

**Width of right of way.**—As sec. 15 of the charter of the Tennessee & Pacific Railroad Company conferred upon it all the rights, easements, and franchises of the Nashville & Chattanooga Railroad Company, the latter company, as the lawful purchaser thereof, is now entitled, over the line of this road from Nashville to Lebanon, to all the rights and privileges conveyed in secs. 23 and 24 of its own charter, which give a *hundred feet on each side* of the center of said road, when necessary for railway purposes, in the absence of any contract with the *original* landowner to the contrary. 5 Pickle (Tenn.), 293.

For a discussion of this and kindred subjects, together with the right and method of taking more than one hundred feet on each side of the road, when necessary, for railroad purposes, see *Eminent Domain, Right of Way*, herein. Refer to index.

**Where Tennessee & Pacific Railroad Company incorporated ; termini.**—The Tennessee & Pacific Railroad Company was chartered by the State of Tennessee, Acts 1865–66, ch. 88, p. 252, the eleventh section of which provided that the said road should be located on the nearest and most practicable route from Knoxville to Nashville, and from Nashville to Jackson, and from Jackson to Memphis.

**Distance built when purchased by Nashville, Chattanooga & St. Louis Railway.**—Only the road from Nashville to Lebanon was completed when purchased, and no extension has since been made under this charter.

## ORIGINAL CHARTER OF THE TENNESSEE & PACIFIC RAILROAD COMPANY.

[Acts Tenn., 1865–66, ch. 88, p. 252.]

**SECTION 1. Incorporation, name, general powers.**—*Be it enacted by the General Assembly of the State of Tennessee, That the formation of a company is hereby authorized which, when*

formed, shall be a body corporate by the name and style of the "Tennessee & Pacific Railroad Company," and by such corporate name shall be capable in law to buy, receive by gift, hold, sell, and convey real and personal estate as hereinafter provided, make contracts, sue and be sued, to make by-laws, and do all lawful acts properly incident to corporations and to the business for which it is hereby incorporated, and to have and use a common seal, the same to destroy at its pleasure, and shall have succession for ninety-nine years of members as hereafter provided.

The corporate existence of this company has ceased, though its rights, privileges, and franchises are possessed and exercised by the Nashville, Chattanooga & St. Louis Railway. For its general powers, see chapter 1, herein.

**SEC. 2. Value of shares, books opened, commissioners.**—*Be it further enacted,* That books for the subscription of two hundred thousand shares of the capital stock of said company of fifty dollars each shall be opened on the first Monday of 1866, and shall be kept open for one hundred days, Sundays excepted, between the hours of ten o'clock in the morning and four o'clock in the evening of each of those days at the following places and by the following named persons: At Nashville, Tennessee, Joseph W. Allen, M. Burns, A. Nelson, A. B. Shankland, A. V. S. Lindsley, Sam. J. Carter, T. D. Fite, W. M. Cook, A. G. Sanford, A. Halitton, John Kirkman, Jacob McGavock, A. H. Stephens, J. P. Campbell, J. W. Paramore, N. Derby, — Budake, and H. G. Scovel; at Lebanon, Wilson county, Dr. John D. Owens, Sam. Matley, Wm. M. Faurt, J. R. Davis, Matthew Hawkins, T. W. Edwards, William B. Campbell, and B. J. Tarver; at New Middleton, Smith county, B. F. C. Smith, Sterling Ward, James G. Bridges, James Burnett, M. D. Mason, John Yeton, and E. Upton; at Alexandria, DeKalb county, William Floyd, T. J. Ford, W. L. Waters, and John D. Furan; at Cookeville, Putnam county, Holland Denton, B. D. Hunter, Stephen M. Burton, — Douglas, and James McKinney; at Livingston, Overton county, J. D. Goodpasture, James M. Armstrong, J. M. Goodbar; at Montgomery, Mor-

Where opened,  
and by whom.

Stock books.

gan county, E. Miles, W. J. Scott, Elsee Burrell, and S. C. Honeycutt; at Clinton, Anderson county, William Wallace, John Ross, James A. Daughy, and George Leath; at Knoxville, Knox county, John C. Van Gilder, James Armstrong, John Williams, Joseph Logan, James C. Luttrell, James C. Moses, Perez Dickinson, and William Heiskell; at Sparta, White county, George Dibril, J. F. Vass, Dr. F. Snodgrass, H. L. Carvicke, Samuel Parker.

**SEC. 3. Subscription to stock, payment.**—*Be it further enacted*, That the said commissioners, or a majority of them, at each of the places aforesaid, shall receive subscription for stock in the said railroad company, during the time the said books are hereinbefore directed to be kept open, and on each share so subscribed, shall demand and receive one dollar, without which the subscription shall be void.

**SEC. 4. Deposit of money; commissioners; incorporation perfected, when.**—*Be it further enacted*, That as soon as the time for receiving subscription aforesaid shall have expired, the said commissioners shall respectively deposit all the money so received by them in some national Deposit in  
bank. bank doing business in this state, to the credit of the Tennessee & Pacific Railroad Company, and subject to the orders of the president and the board of commissioners hereinafter provided for and appointed, and shall also forward a correct list of the subscribers, as well as the amount of stock each one shall have subscribed to the stock of said company, to said board of commissioners, to be composed of the following persons, viz.: John P. Campbell, John Kirkman, A. Nelson, S. E. Hare, Charles H. Erwin, H. A. Sanford, A. Hamilton, Joseph W. Allen, J. J. Swiggart, John B. Johnson, J. C. Parkhurst, Commission-  
ers. H. A. Duncan, W. T. Berry, James Whitworth, W. L. Watters, John W. Bowen, G. W. Keith, John C. Van-Guilder, John Williams, Sam'l Morgan, Wm. Bossen, J. W. Paremore, A. H. Stephens, E. H. East, and Stephen M. Burton, who, or a majority of whom, shall constitute a quorum to do business. And said commissioners, immediately after the passage of this act, or as soon thereafter as convenient, shall



meet in the city of Nashville, choose a president, establish rules to govern their proceedings, appoint such other officers and agents as they may think proper, and prescribe their duties. They shall have power, and are hereby directed, to appoint an agent or agents, to solicit stock in said corporation, in any state or country; and said board of commissioners shall ascer-

tain, from time to time, the whole number of shares  
**Organization.** taken in said company; and as soon as the number of five thousand shares shall have been subscribed, on which the sum of one dollar per share shall have been paid, the Tennessee & Pacific Railroad Company shall be regarded as formed, and thenceforth and from that date the said subscribers of the said stock shall form a body politic and corporate in fact and in law, by the name and for the purposes aforesaid, and in all things to be represented by the board of commissioners aforesaid, under a board of directors hereinafter prescribed.

**SEC. 5. Commissioners survey route, when; books kept open, when; increase of capital.**—*Be it further enacted,* That upon the fact being ascertained of the subscription of five thousand shares aforesaid, and the payment aforesaid of one dollar

per share to the stock of said company, the board  
**Survey.** of commissioners may proceed to survey the route of said road and estimate the cost of its construction. Nevertheless, no conclusive and binding location of said road shall be made by the commissioners, but the same shall be left to the determination of the first board of directors, chosen by the stockholders in the manner hereinafter directed; and the said board of commissioners, by themselves or agent, at such times and places as they shall deem proper, and upon such terms as to times and places as they may think proper, shall continue to

receive additional subscriptions until the number of  
**Additional subscription.** fifty thousand shares shall have been subscribed to the capital stock of said company; and for the residue of one hundred thousand shares, the said corporation, when organized, may continue, in like manner, to receive additional subscrip-

tions: *Provided,* That the directors, chosen by the  
**Increase capital.** stockholders of said company in the manner herein-

after directed, shall have power to increase the number of shares in said company to the amount necessary to complete said road.

**SEC. 6. President and number of directors, how chosen.—**

*Be it further enacted*, That the affairs of said company shall be managed by a board of fifteen directors, any eight of whom shall constitute a quorum to do business, thirteen of whom shall be chosen by the stockholders, in the manner hereinafter provided, and two of whom shall be appointed and commissioned by the governor; and a president of the company shall be elected by the directors, from their own number, in such a manner as the board of directors may prescribe.

This road has been purchased by the Nashville, Chattanooga & St. Louis Railway, whose directors control it as a part of its general system. The number and method of electing directors is therefore now controlled by the charter of said Nashville, Chattanooga & St. Louis Railway. See ch. 1, secs. 8 and 9, herein.

**SEC. 7. First election of directors.—***Be it further enacted*,

That at the first election for directors the board of commissioners shall have the power to appoint three judges and two clerks, for the purpose of holding said elections; and upon the certificates of said judges the persons so elected directors shall be authorized to qualify as directors.

**SEC. 8. Annual election of directors, powers.—***Be it fur-*

*ther enacted*, That in order to continue the succession of president and directors of said company, thirteen directors shall be chosen annually by the stockholders of said company, at such times and places as the president and <sup>Annual election.</sup> directors may designate, giving thirty days' notice of the same in one or more newspapers published in the cities of Nashville and Knoxville; and two directors shall be appointed and commissioned annually by the governor; and the directors thus chosen and appointed of said company shall have power to appoint judges and clerks of all elections, and to elect a president from among the members of said board of directors, and to allow him such pay for his services as they may think proper; and if any vacancy occur by death, resignation, or otherwise, of any president or directors, before the time he was elected for has expired, a person to fill such vacancy for

the unexpired time shall be appointed by the president and directors; and the president and directors shall hold and exercise their offices until their successors are elected and qualified. If the time fixed by a by-law of the corporation for holding the annual election of directors shall have passed without the holding of an election for directors, the corporation shall not be, on that account, dissolved, but it shall be lawful on any other day to hold and make such election.

**Powers of directors.**

This road is now owned by the Nashville, Chattanooga & St. Louis Railway, whose directors control it as a part of its general system. The directors of the general system are now elected under the charter of the Nashville, Chattanooga & St. Louis Railway. See ch. 1, secs. 8, 9, 10, herein.

**SEC. 9. Oath of president, treasurer's bond.**—*Be it further enacted,* That the president and directors, before they act as such, shall make oath or affirmation that they will well and faithfully discharge the duties of their respective offices, to the best of their skill and ability; and the said president and directors shall have power to appoint a treasurer of said company and to require of him a bond in such penalties, with such securities, as they may prescribe, payable to said company, and conditioned for the faithful keeping and disbursing all money that may come into his hands as treasurer of said company, and with such other conditions as they may prescribe, upon which said bond a recovery may be had for a breach of the condition thereof by suit in the corporate name of said company in any of the courts of this state having jurisdiction thereof; and the board of directors, in the absence of the president, may fill his place by electing one of their members president *pro tempore*.

**Oath.**

**Bond, etc.**

**SEC. 10. Liability of directors.**—*Be it further enacted,* That the board of directors shall not exceed in their contracts the amount of the capital of the corporation or the funds the funds of the company may have borrowed or the amount of the state aid hereinafter provided for and which may be placed at the disposal of the board; and, in case they should do so, the president and directors, at any meeting at which the contracts so exceeding the amounts afore-

**Not to exceed capital.**



said, and voting for the same, and not voting against it, shall be jointly and severally liable for such excess, both to the contractors and corporation. Liability.

For the liability of directors of the general system of which this road now forms a part, see charter of Nashville, Chattanooga & St. Louis Railway, sec. 12.

**SEC. 11. Construction, when to commence; rate of charge; route.**—*Be it further enacted*, That said company shall have power and may proceed to construct said railroad as speedily as their means will permit, and may use any section of said road, by them to be constructed, before the whole is completed, subject to the same rates that other railroads in this state are allowed by law to charge; *Provided*, Said railroad shall be located on the nearest and most practicable route from Knoxville to Nashville, and from Nashville to Jackson, and from Jackson to Memphis, to be ascertained by the survey hereinbefore authorized and directed; and said company have the exclusive right of carrying and transporting persons, goods, merchandise, and all freight and produce, over said road by them to be constructed, subjected to the same rates hereinbefore prescribed and directed. When to commence.  
Rate.  
Route.

As to rate of charge, see notes to sec. 14 of charter of Nashville & Chattanooga Railroad Company, chap. 1.

**SEC. 12. Installments, forfeiture of shares.**—*Be it further enacted*, That the board of directors may call for the payment of forty-nine dollars on each share, in sums not exceeding five dollars at any one time; thirty days' notice of which shall first be given in one or more newspapers published in the cities of Nashville and Knoxville, and a failure to pay after such notice, or to secure the same to be paid, according to the rules of the company, any of the installments so called as aforesaid, shall work a forfeiture of the share or shares on which default shall be made, and all payments thereon; and the same shall vest in and belong to said company; but the board of directors may, upon the owner or owners thereof paying all arrearages on such share or shares, with all costs which may have accrued, and the interest there- Calls.  
Forfeitures, etc.

on, restore the same; or the directors may revive the forfeiture after thirty days and sue the stockholder or stockholders, at their discretion.

**SEC. 13. Transfer of stock, increase of capital.**—*Be it further enacted*, That the stock in said company may be transferred in such manner and form as may be directed by the by-laws of said corporation; and said company may increase the capital stock to a sum sufficient to complete said railroad the whole distance between Knoxville and Memphis, upon the nearest and most practicable route, to be ascertained as hereinbefore provided, and to stock said railroad with everything necessary to put it in complete operation, either by opening books, from time to time, for new stock, or by borrowing money upon the credit of the company, and in the manner which it may be done in either case, shall be prescribed by the by-laws of said corporation; and any state, citizen, or corporation, or company, of this or any other state or country, may subscribe for and hold stock in said company.

See notes to sec. 16 of charter of Nashville & Chattanooga Railroad Company, ch. 1, herein.

**SEC. 14. Qualification of officers and voters, proxy, scale of voting.**—*Be it further enacted*, That any person who is the owner of one or more shares of stock, in his own right, and who has been the owner of the same three months (except at the first election), shall be eligible to hold any office in said company; and every person must have owned the share or shares, on which he offers to vote, at least three months, except at the first election; and stockholders may vote in person or by proxy, given in writing, and in voting for directors, or on any question which may come before a meeting of the stockholders, or which may be submitted to the stockholders in any other manner, the owner of one or more shares shall be entitled to one vote for each share he, she, or they may own.

See notes to secs. 19 and 20 of charter of Nashville & Chattanooga Railroad Company, ch. 1, herein.

**SEC. 15. Right of way, condemnation; Nashville & Chattanooga charter applies, when; storage.**—*Be it further en-*

*acted*, That the right of way is hereby granted to said corporation, to have and to hold in fee, or for a term of years, any lands, tenements, or hereditaments which may be necessary to said road or appurtenance thereof, or for the erection of depot houses, or storehouse or houses, or offices for the officers and servants or agents of the company, or for workshops or foundries to be used for the said company, or for procuring rock, stone, timber, earth, and gravel, water, and all materials necessary for the construction of the road and its appurtenances, and for effecting transportation thereon; and where any land or right of way may be required by said company for the purpose of constructing said road, and, for the want of agreement or for any other cause the same cannot be purchased from the owner or owners thereof, the same may be taken at a valuation to be ascertained in the way, and with the same rights, conditions, and liabilities, as is especially provided and enacted in the act chartering and incorporating the Nashville & Chattanooga Railroad Company, and all the rights, easements, and franchises, and all the liabilities to and held by the said Nashville & Chattanooga Railroad Company shall be held, possessed, and exercised, and are hereby granted, to the company which it is intended by this act to incorporate, including the right to take and store all goods, wares, merchandise and produce intended to be transported over said road, provided said company shall not charge storage on goods, wares, merchandise, and produce which they receive in store to be transported over said road, but shall be allowed to charge the usual rates of storage on all freights received for delivery, after giving the assignee or assignees ten days' notice of the reception of such freights.

Right of way.

Real estate.

Valuation.

Rights of N.  
C. & St. L. Ry.

Storage  
charges.

**Status of the right of way on this branch now.**—It will be noticed, as one of the peculiarities of this charter, that the right of way was first *granted* to the company. It then provided, and which is the most valuable part of the charter, that "if, for want of an agreement or for any other cause, the right of way cannot be purchased, the same may be taken at a valuation to be ascertained in the way, and with the same rights, conditions, and liabilities, as is provided and enacted in the charter of the Nashville & Chattanooga Railroad Company." etc. This was a very valuable franchise, and confers upon the Nashville, Chattanooga



& St. Louis Railway, which company has subsequently purchased the property, road, franchises, etc., of this railway, the right to one hundred feet on each side of the center of the road, when necessary for railway purposes, in the absence of any written agreement with the *original* landowner to the contrary.

See full discussion of this in notes to secs. 24 and 25 of the charter of the Nashville & Chattanooga Railroad Company, ch. 1, herein.

**SEC. 16. Dividends, banking, and insurance.**—*Be it further enacted*, That the profits of said company, or as much thereof as the board of directors may deem advisable, shall, when the affairs of the company permit, be paid to the stockholders semi-annually, in proportion to the amount of stock each may hold, but no dividend shall be paid to any defaulting stockholder; and said company is hereby expressly prohibited from carrying on any banking operations, but may effect insurance on the lives and property transported over said road.

See notes to secs. 30 and 31 of charter of Nashville & Chattanooga Railroad Company, ch. 1, herein.

**SEC. 17. President and directors, powers of.**—*Be it further enacted*, That the president and board of directors shall have power to appoint all officers, agents, engineers, servants, and employees, in whatsoever number may be necessary to carry on, aid, inaugurate, and transact the business of the company, and to remove them at pleasure; they shall have the power to determine and fix by contract the amount of compensation of all officers, agents, servants, and employees of said company, and to regulate by their by-laws the manner of selling and adjusting all accounts in favor or against the company, and the said company shall have and possess all such additional powers as may be necessary to carry into effect and execution the power granted in this act of incorporation.

**SEC. 18. State aid to.**—*Be it further enacted*, That the same state aid to railroads provided for by the act of 1852, ch. 151, and subsequent acts amendatory thereof, commonly called the "Internal Improvement Law," is hereby granted to the company intended to be incorporated by this act; and whenever it shall be satisfactorily shown to the governor that stock sufficient in good and *bona fide* subscription to grade and prepare

for iron rails thirty miles of the said road, then the governor shall be authorized, and is hereby authorized, to issue and deliver, upon the application of the president of the said company, the amount and kind of bonds provided for as aid to said road in said general internal improvement law, which shall not be sold below the par value; and as fast as every additional ten miles shall be prepared, as directed in said law, then the additional amount of the same kind of bonds shall, by the governor, be issued and delivered in like manner to said company, and in all other respects all the aid to railroads provided for in the general internal im-  
State bonds.  
Other aid.  
 provement laws of this state are hereby granted to the company herein incorporated, under the restrictions, liabilities, and liens therein prescribed.

See next chapter for state aid.

**SEC. 19. State aid, how determined.**—*Be it further enacted,* That the same amount of state aid in coupon bonds, payable in the same way, and having a like time to run, upon the same conditions, and with the same liens, securities, and liabilities that are granted to the Southwestern Railroad Company to aid said company in building bridges, are hereby granted for the same purpose to the Tennessee & Pacific Railroad Company, incorporated by this act; and the governor is hereby authorized to issue to the said company bonds of the same amount and kind aforesaid, upon the same conditions as are provided for in the act incorporating the Southwestern Railroad Company, and the several amendments thereto.

**SEC. 20. State aid; lien on road for.**—*Be it further enacted,* That for the bonds received, as herein provided, the state shall have and hold a prior lien upon the said railroad, its fixtures and equipments, to be built by the company intended to be incorporated by this act, in the same way and to the same extent, and with the same remedies, and with as full power to enforce the same, as it possesses in regard to the other railroads in the state, to which aid has or shall be extended; and the president and directors of the Tennessee & Pacific Railroad Company, by this act incorporated, shall provide for  
Interest, etc.

and pay the interest upon the bonds by them received from the state, as the same falls due, and shall provide for and pay the same rate per cent. into the sinking fund as other railroads in the state are required by law to pay, and, failing to do so, shall be subject to the penalties established by law.

**SEC. 21. Road to be completed, when.**—*Be it further enacted,* That the railroad authorized by this act shall be commenced within five years after the passage of the same, and shall be finished in fifteen years thereafter, otherwise the charter hereby granted shall be void.

**SEC. 22. Company subject to general laws; president.**—*Be it further enacted,* That the company chartered by this act shall be subject to all general laws passed in this state for the government of railroad companies, and no person shall be elected thereto, or hold the office of president of this railroad, who is president of any other railroad in this state. (Acts 1865-6, ch. 88, p. 252; passed May 24, 1866.)

It will be noticed that the above section does not *reserve* the right to modify, alter, or repeal the charter. It simply provides that the company "shall be subject to all general laws passed in this state for the government of railroad companies." In other words, this referred to "police" and "traffic" regulations, and in no manner can be construed into a reservation on the part of the state to modify, alter, or repeal the charter, or to divest the company of any vested rights under the same. Section 15 of this charter, therefore, providing for a one hundred foot right of way on either side of the center of the road, in absence of contract to the contrary, is binding. See 9 Bax., 442; 2 Pick., 614; 3 Pick., 155; 139 U. S., 833; 29 U. S., 938; 117 U. S., 129.



## CHAPTER VI.

*DEED OF AND ACTS RELATING TO THE TENNESSEE & PACIFIC RAILROAD COMPANY.***Deed to Nashville, Chattanooga & St. Louis Railway of road, franchises, etc., of Tennessee & Pacific Railroad.**

TENNESSEE & PACIFIC R. R. Co.,  
 TO—*Deed.*  
 N., C. & St. L. Ry.

In pursuance of the resolutions of the stockholders of the Tennessee & Pacific Railroad Company, adopted at their convention at Nashville, on September 12, 1877, and that of the directory of said company, passed on the first day of October, 1877, as will appear from the minutes of said board, and for and in consideration of the payment to the said Tennessee & Pacific Railroad Company of the sum of one hundred and forty thousand six hundred dollars in State of Tennessee bonds, forty thousand dollars in Tennessee & Pacific Railroad Company mortgage ten per cent. bonds, and ten thousand dollars in cash, by the Nashville, Chattanooga & St. Louis Railway, the receipt whereof is hereby acknowledged, the said Tennessee & Pacific Railroad Company does hereby bargain, sell, alien, and convey to the said Nashville, Chattanooga & St. Louis Railway and its assigns, forever, all and singular the estate and property, real, personal, and mixed, and all fixtures, rights, privileges, immunities, franchises, and easements of all and every kind held and owned or occupied by the said Tennessee & Pacific Railroad Company or thereto belonging, including, especially, all and singular the railroad of said company, with the appurtenances thereof, from and including its terminus at Nashville, in the county of Davidson, State of Tennessee, to and including its terminus in the town of Lebanon, in the county of Wilson, in said state, being a distance of about thirty miles; together with all and singular the lands, tracks, lines, rails,

bridges, ways, rights of way, materials, privileges, interests, real estate, and personal property, situated in the State of Tennessee, of every kind and character, including the depots and stations and grounds attached thereto, on said line of railroad; and also all the rolling stock, locomotives, engines, tenders, cars, tools, and machinery belonging or appertaining to the said railroad of the Tennessee & Pacific Railroad Company, as aforesaid, including all of the choses in action of said company, of every kind and nature—but this is not to include the claim known as the Mabry claim, being a debt due by one Jas. A. Mabry and secured, in part, by real estate in or near Knoxville, Knox county, Tennessee, the said Mabry claim being excluded from the conveyance herein, and to be and remain the property of the said Tennessee & Pacific Railroad Company. To have and to hold the same to the said Nashville, Chattanooga & St. Louis Railway and its successors and assigns, forever. And the said Tennessee & Pacific Railroad Company does hereby covenant to and with the said Nashville, Chattanooga & St. Louis Railway that it is lawfully seized and possessed of said above described property, and has full right and power to convey the same, and that the same is wholly unincumbered, and that it will forever warrant and defend the title to the same against the claim or claims of any and all persons whatsoever to the said property herein conveyed and any part thereof.

In witness whereof, the said Tennessee & Pacific Railroad Company has caused its president to affix its corporate name and seal hereto, this first day of October, 1877.

[SEAL.]

TENNESSEE & PACIFIC RAILROAD,

By JOHN W. CHILDRESS, *Pr.*

R. C. BRANSFORD, *Sec'y.*

Registered December 7, 1877, in Register's office, Davidson county, Tennessee, book 58, p. 537.

### **Counties of Wilson and Davidson given privilege of voting for stock in Tennessee & Pacific Railroad Company.**

*Be it further enacted*, That the general provisions of secs. 5, 6, 9, and 12 of this act be, and the same are hereby, extended to

the . . . and the Tennessee & Pacific Railroad Company, and that the counties of Wilson and Davidson shall have privilege of again voting for or against subscriptions to the stock of said Gallatin & Lebanon and Tennessee & Pacific Railroad Companies, at the request of said companies, and all laws or parts of laws conflicting herewith are hereby repealed. (Acts Tenn., 1868-9, ch. 11, p. 93, sec. 29.)

1. The counties of Wilson and Davidson, under this authority, voted a large subscription. Their stock was subsequently sold to the Nashville, Chattanooga & St. Louis Railway. See minute book "E," pp. 302-305 and 348-351 of the county court of Wilson county.

2. Secs. 5, 6, and 9, above referred to, authorized the counties to indorse the bonds of the company, and prescribed rules and regulations in regard thereto.

3. Sec. 12, above referred to, authorized the company to issue bonds to an amount not exceeding two hundred thousand dollars, on such terms and in such denominations as to it might seem advisable.

**Tennessee & Pacific Railroad Company and Nashville & Cincinnati Railroad Company authorized to unite upon a common track, how and when.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the charter of the Nashville & Cincinnati Railroad Company, enacted by the general assembly at its session of 1851-2, as recorded in ch. 303, is hereby revived, with the privilege of building said road to such distance as may be deemed expedient by said company, on the south side of the Cumberland river, and the said Nashville & Cincinnati Railroad Company and the Tennessee & Pacific Railroad Company are hereby authorized and empowered to unite upon a common track, either single or double, as may be deemed expedient by said companies, and to such distance to the eastward or north-eastward of Nashville as the said companies, in their discretion, may agree upon. But in the case of any such union of the said roads upon a common track, as herein provided, the state aid provided for by law shall not be extended in full to each of the roads for the distance they may run upon a common track, but only to the amount of three-fourths thereof to each road; and for such distance as the said roads may run upon separate and distinct tracks the said state aid shall be extended in full, as



provided for by law. (Acts Tenn., 1865-6, p. 388; passed May 26, 1866.)

**Attorney-general directed to institute suit against Tennessee & Pacific Railroad Company for bonds fraudulently obtained.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the attorney-general of this state shall forthwith institute, in the name of the state, a suit in the chancery court of Davidson county, against the Tennessee & Pacific Railroad Company, setting forth particularly that the said company has fraudulently obtained the issuance of the bonds of the state, to the amount of eight hundred and eighty-five thousand dollars, and has obtained the issuance of the said bonds contrary to the provisions of the act to establish a system of internal improvements in this state, passed February 11, 1852, and contrary to the provisions of an act passed December 7, 1867, entitled "An act to amend the internal improvement laws of the state," passed February 11, 1852, and enjoining said Tennessee & Pacific Railroad Company, its officers, agents, directors, and stockholders, from in any way disposing of said bonds until the further order of the court, and asking that the board of direct-

Officers and stockholders individually liable.

ors, president, officers, and stockholders of the Tennessee & Pacific Railroad Company be held individually liable for the payment of the bonds so fraudulently and illegally obtained by such company, and for all other losses that may fall upon the state in the consequence of the commission of any fraud by such company, or by the illegal act of said company in the receipt or disposal of said bonds by said company, its agents, or officers or attorneys; *Provided*, That nothing in this act shall be so construed

Proviso.

as to require suit to be brought against John Kirkman, W. R. Elliston, Thomas Chadwell, E. J. Williams, D. Cooke, Jr., E. H. East, and Abram L. Demoss, or any directors or stockholders of said company who may show that they were ignorant of or opposed to the procurement of said bonds by the company; *Provided further*, That

Proviso.

said stockholders did not approve of the use of said

bonds, or the proceeds thereof after they were obtained, in the building of the roadbed, bridges, or in the buying of iron for the purpose of ironing said road, or the furnishing of cross-ties, or other material of said road. And said attorney-general shall also pray the court for such other relief in behalf of the state, as against the said company, its directors and stockholders, as under existing laws may be lawfully granted; *Provided*, That the attorney-general shall not bring suit against said company, its directors and stockholders, as herein provided, without the concurrence or assent of Robert J. McKinney, Archibald Wright, Francis B. Fogg, and the governor, secretary of state, and comptroller, or a majority of them.

Other relief.

Proviso.

SEC. 2. *Be it further enacted*, That the public welfare requires that this act shall take effect from and after its passage. (Acts Tenn., 1870, ch. 116, p. 179; passed July 7, 1870.)

A bill was filed under this act, but dismissed, as the company settled under the Acts of 1872, ch. 6. See act further on.

**Resolution directing directors of Tennessee & Pacific Railroad Company to account for funds received by road; to disclose list of stockholders and distance road had been built, and cost.**

*Resolved by the General Assembly of the State of Tennessee*, That the president and directors of the Tennessee & Pacific Railroad Company be, and they are hereby, requested to render this general assembly, on or before the first day of February, 1871, a full and detailed account of all funds of every kind and description which have been received by them from all sources, and how the same has been disbursed, to whom paid and for what purpose paid, and what amount of said funds and of what kind, are now in their possession.

*Resolved further*, That the said president and directors furnish also to this general assembly a full and complete list of stockholders in said railroad company, showing the amount of stock subscribed by each stockholder, the date of each subscription, the amount paid by each at the time of subscribing, how much has been paid since, and the amount and date of any such

subsequent payment, and how much, if any, remains unpaid upon such subscription of stock.

*Resolved further*, That the said president and directors be required to furnish this general assembly with a statement showing how far said road is completed and in operation, and cost of constructing and equipping the same, the cost of running it, and receipts or earnings of said Tennessee & Pacific Railroad. (Acts Tenn., 1870-1, p. 169, No. 29; approved January 24, 1871.)

**Commissioners directed to sell Tennessee & Pacific Railroad and bonds hypothecated by it, condition.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the commissioners for the state for the sale of delinquent railroads be, and they are hereby, instructed to file a bill in the name of the state, or take any other necessary steps for the sale of the Tennessee & Pacific Railroad, or of the interest of the state therein, as provided by the act which this is intended to amend.

The act referred to above as being amended by this act, authorized the sale of *all* delinquent railroads, and may be found in Acts Tenn., 1870-71, ch. 23, p. 25, which, in turn, amended the Acts of 1870, ch. 79.

SEC. 2. *Be it further enacted*, That the bonds hypothecated by the Tennessee & Pacific Railroad Company shall be sold and the proceeds of sale shall first be applied to the discharge of the sum for which said bonds were hypothecated, and the residue paid into the state treasury. But should it not be necessary to sell all of said bonds, then only so many of said bonds shall be sold as will realize a sum necessary for that purpose, and the others shall be deposited with the comptroller of the treasury; *Provided*, Said railroad company, or its stockholders, electing so to do, may settle for the state's interest therein without the suit herein provided for, upon the same basis of proportional payment with the purchasers of the Winchester & Alabama, McMinnville & Manchester, Knoxville & Kentucky, and the Cincinnati, Cumberland Gap & Charleston railroads; that is to say, said Tennessee & Pacific Railroad Company, or its stockholders, may purchase the entire interest of the state

Bonds hypothecated to be sold.

Proviso.

May settle without suit.



therein by paying to the governor, in lawfully issued bonds and coupons of the state, such proportion of its state debt as will equal the average proportion of the aggregate like debts of the other named railroads, which has been realized and secured to the state by sales of the same; the amount so to be paid to be ascertained by said commissioners, and payment thereof to be made and secured upon exactly the same terms and conditions as those for the other railroads specified; the company to have preference of purchase, and until the second Tuesday of April, 1872, in which to make the first payment, and upon the company's failure to purchase, then the stockholders thereof to have twenty days from the said second Tuesday of April, 1872, in which to purchase and make the first payment, but a purchase by any part of the stockholders to be for the benefit of all stockholders in proportion to their respective amounts of stock, including the counties of Wilson and Davidson, who may elect to participate in such purchase under its terms, and it being further expressly provided that a sale under provisions of this act shall forever prevent said Tennessee & Pacific Railroad Company from demanding or receiving any further issue of bonds of the state, under any act of the legislature heretofore passed; *Provided further*, That nothing in this act shall relieve said Tennessee & Pacific Railroad Company from liability to the state in full for all such bonds received from the state, as may be judicially determined under suit in the chancery court at Nashville, to be illegally held by said company; the institution of such suit to be at the sound discretion of said commissioners, under advice of the attorney-general of the state, or such other legal counsel as may be selected, and to be only instituted within ninety days after the passage of this act, and in default of such suit settlement under the provisions of this act to be final; but if the suit provided by this section be instituted, said company, or its stockholders, to have sixty days from final decree under the same in which to purchase said Tennessee & Pacific Railroad on the terms herein provided.

Payment,  
how made.

Company to  
have preference.

Proviso.

SEC. 3. *Be it further enacted*, That this act take effect from and after its passage, the public welfare requiring it. (Acts Tenn., 1871, ch. 127, p. 138; passed December 13, 1871.)

This act was amended by Acts 1872. ch. 6, p. 27 (ex. ses.). See act immediately following.

**Commissioners authorized to compromise state's claim against Tennessee & Pacific Railroad Company for \$300,000, how.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the said act, passed on the 13th December, 1871, which provides for a sale of the state's interest in the Tennessee & Pacific Railroad, be amended so that the directors of said road, representing the stockholders in said Tennessee & Pacific Railroad Company, shall be permitted to settle the debt of the state against said railroad on account of state bonds issued to it in aid of its construction, by the payment to said commissioners of the sum of three hundred thousand dollars (\$300,000), in the bonds of the State of Tennessee, with coupons since January, 1871, attached, under the provisions of existing laws upon the subject of the sale of delinquent railroads, one-fourth of which shall be paid on the day of sale or twenty days thereafter, and the balance in one, two, and three years thereafter.

Basis of settlement between state and T. & P. R. Co.

SEC. 2. *Be it further enacted*, That a compliance with the provisions of this act shall be deemed a full satisfaction and discharge of the state's claim against said railroad.

SEC. 3. *Be it further enacted*, That the second section of the act of December 13, 1871, with the provisos thereto attached, is hereby repealed, upon the Tennessee & Pacific Railroad Company accepting the terms of this act, and upon said company making the payment and complying with the terms as required by this act, and upon the company paying the costs that have or may accrue upon any suit brought by the state to recover any portion of the state's bonds heretofore issued to said company; and section first of said act of December 13, 1871, is suspended until said Tennessee & Pacific Railroad Company shall notify the commissioners of their refusal to accept the terms of the

first section of this act, provided said notice shall be given the commissioners within twenty days after the passage of this act.

SEC. 4. *Be it further enacted*, That this act shall take effect from and after its passage, the public welfare requiring it. (Acts Tenn., 1872 (ex. ses.), ch. 6, p. 27; passed March 28, 1872.)

The state was settled with under this act.

**State aid to the Tennessee & Pacific Railroad.**—Below is given the act of the legislature of Tennessee authorizing state aid to be granted to the Tennessee & Pacific Railroad, for the purpose of building and equipping its road. This aid was given by having the governor to indorse the bonds of the road on behalf of the state. The act is quite lengthy, and is so seldom required, being long since repealed, that, for the purpose of space and economy, it is not deemed advisable to insert it in full in this compilation, but simply refer to the act and page where it can be found.

Acts of 1867-8, ch. 17, p. 14, sec. 9. An additional sum of \$10,000 per mile appropriated to the Tennessee & Pacific Railroad Company under the internal improvement act. The charter of the road itself provided for state aid. See charter in preceding chapter.



## CHAPTER VII.

## WINCHESTER &amp; ALABAMA RAILROAD COMPANY.

(NOW FORMING PART OF FAYETTEVILLE BRANCH.)

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—Under the general improvement laws of 1851–52, and amendments thereto, the State of Tennessee, through its governor, indorsed the bonds of the various railroads in the state, to aid in their construction, retaining a lien on the respective roads so assisted, as security therefor. Among the number was the Winchester & Alabama Railroad Company.

Default having been made in the payment of interest on the bonds issued for its benefit, a bill was filed in the chancery court at Nashville in the name of the state, against the Edgefield & Kentucky Railroad Company *et als.*, to which the Winchester & Alabama Railroad Company was also made a defendant, seeking to enforce the state's lien or statutory mortgage.

This bill was filed in pursuance of an act of the legislature of 1870–71, ch. 23, p. 25, authorizing the sale of all delinquent roads, the tenth section of which provided, “that upon the sale of any of the franchises of either of the railroad companies, by the commissioners, under the provisions of this act, all the *rights, privileges, and immunities* appertaining to the *franchise so sold*, under its act of *incorporation*, and the amendments thereto, and the general improvement law of the state, and acts amendatory thereof, shall be *transferred* to and vest in such *purchaser*, and the purchaser shall hold said franchise, subject to all liens and liabilities in favor of the state, as now provided by law against the railroad companies.”

A decree of sale was entered, and the commissioners reported that propositions were made by John Frizzell and others, and Wright & Co., to buy the road at the minimum price fixed by the decree, which was \$300,000. Preference was given to

Wright & Co., but after considerable litigation they withdrew their offer, and M. J. Wicks and J. J. Donegan purchased the road at the figure mentioned. Their bids were subsequently transferred to the Memphis & Charleston Railroad Company, and on June 28, 1875, a final decree was entered in said case, confirming the sale of the road, franchises, privileges, right of way, etc., to said Memphis & Charleston Railroad Company. See decree itself in minute book 2, p. 438, in chancery court at Nashville, Tenn., which decree is also set out herein, in next chapter. The decree, with proper acknowledgments, is registered in the register's office of Warren county, in book 7, No. 7, pp. 72, 73; in Coffee county, in book vol. No. 2, trust deeds, etc., pp. 4 and 5 [book E, p. 109]; in Franklin county, in book 6, p. 40, and in trust book No. 1, pp. 354-5-6. On July 28, 1877, the Memphis & Charleston Railroad Company sold this railway, together with the McMinnville & Manchester Railroad, to the Nashville, Chattanooga & St. Louis Railway, for the sum of \$320,000, in bonds and other considerations mentioned in the deed. This conveyance was registered in the register's office of Franklin county, book 1, pp. 553-555; in Lincoln county in book Z, pp. 216-221; in Coffee county in book P, pp. 453, 454; in Warren county in book 8, pp. 296-299. The deed is also inserted herein among the acts, deeds, etc., relating to the Winchester & Alabama Railroad. See next chapter.

This was a legal purchase. Under the Acts of Tenn., 1871, ch. 69, which superseded the Acts of 1871, ch. 22, it was provided that, "every railroad corporation in this state, whether created under a general or special law, shall have the power to acquire, by purchase or other lawful contract, and have, hold, use, and operate, any railroad, with its *franchises*, belonging to any other railroad corporation."

**What franchises, etc., passed to the Nashville, Chattanooga & St. Louis Railway under this sale.**—In addition to the property, right of way, lands, tracks, etc., therein conveyed, the deed specifically provided for the transfer of all the *rights*, *privileges*, *immunities*, and *franchises* of the company. Section 1 of the charter of the railway provided that the said company should "have and enjoy all the *rights* and *privileges* secured to the Nashville & Chattanooga Railroad Company by an act of the general assembly passed December 11, 1845, and

subject to all the restrictions contained in said charter, which said road shall be built and constructed agreeable to the requirements of the aforesaid charter." This being so, the original Winchester & Alabama Railroad Company possessed all the rights and privileges of the Nashville & Chattanooga Railroad Company, and the latter company, as the lawful purchaser thereof, under the Acts of 1871, ch. 69, is now entitled to hold and operate the same, with all such rights and privileges.

1. For rights and privileges of the Nashville & Chattanooga Railroad charter, see ch. 1. See, also, general discussion herein under *Eminent Domain, Right of Way*, etc. Refer to index.

2. The legislature, in granting a charter to one railroad company, may lawfully confer upon it all the rights, easements, and franchises of another, by simply referring to it in the manner that this was done. See 8 Lea (Tenn.), 427.

**Width of right of way.**—As the charter of the Winchester & Alabama Railroad Company conferred upon it all the rights and privileges of the Nashville & Chattanooga Railroad Company, the latter company, as the lawful purchaser thereof, is now entitled over the line of this road from Decherd to Fayetteville and from Elora to the state line, to all the rights and privileges conveyed in sections 23 and 24 of its own charter, which gives a *hundred feet on each side* of the center of said road, when necessary for railway purposes, in the absence of any contract with the *original* landowner to the contrary. (5 Pick., 293.)

For a general discussion of this and kindred subjects, together with the right and method of taking more than one hundred feet on each side of the center of the road, when necessary for railroad purposes, see *Eminent Domain, Right of Way*, herein. Refer to index.

**Where Winchester & Alabama Railroad Company incorporated, termini.**—The Winchester & Alabama Railroad Company was chartered by Acts Tenn., 1849–50, ch. 56, sec. 6, to construct a road from Winchester, Tenn., to the Alabama state line, in the direction of Huntsville. Subsequently, by Acts Tenn., 1851–52, ch. 43, the charter was amended so as to allow the company to extend the road from the town of Winchester to the Nashville & Chattanooga Railroad. Under this authority the road was built to Decherd. Again, by Acts Tenn., 1851–52, ch. 206, p. 310, sec. 7, the company was authorized to construct its road to Fayetteville, with all the rights,



powers, and privileges given to said company by their *original* charter and acts amendatory thereof. Under this authority the road, from a point at or near Elora, was built to Fayetteville. The road from Elora to the state line in the direction of Huntsville was built under the original charter. See above Acts of 1851-52 in next chapter. The road was also chartered by the State of Alabama (Acts 1855-56, No. 312, p. 314) so as to "begin at a point on the state line between Alabama and Tennessee, where the Tennessee part of the road strikes the said line, so as to connect, and to extend from there through Madison county in the direction of the Tennessee river, within three-quarters of a mile of the village of New Market, continuing by or near Brownsborough through the valley of Flint river, passing close by the village of Vienna, on the Tennessee river, at the nearest and most practicable point for connecting with the Alabama & Tennessee River Railroad, pursuing as nearly as possible the route heretofore surveyed for said road." This charter was subsequently amended by Acts Ala., 1857-58, No. 152, p. 162, so as to authorize and empower the company to extend the railroad across the Tennessee river at the most practicable point, and from thence through Marshall county to the gap of Sand Mountain called Davidson's Hollow, and also to connect with the Tennessee & Coosa Railroad.

That part of the road, however, covered by the *Alabama charter* was never built, and hence the charter and amendment granted by that state, as referred to above, will not be inserted herein. The road from the Tennessee state line to Huntsville, Ala., was subsequently built under the charter of the Huntsville & Elora Railroad Company.

**Distance built when purchased by Nashville, Chattanooga & St. Louis Railway.**—Only the line from Decherd to Fayetteville had been constructed when purchased by this company. The road from Elora to the state line has subsequently been built under the original charter by this company, as therein provided for. The road from the state line to Huntsville, Ala., was built by this company under the charter of the Huntsville & Elora Railroad Company, after it had purchased

said road, which charter was granted by the State of Alabama; the line from Fayetteville to Petersburg was built by this company under the charter of the Duck River Valley Narrow Gauge Railroad Company, while lessee of said road; the road from Petersburg to Columbia had previously been constructed by the Duck River Valley Narrow Gauge Railroad Company. The entire line from Fayetteville to Columbia was subsequently purchased by the Nashville, Chattanooga & St. Louis Railway.

For charters of Duck River Valley Narrow Gauge Railroad Company, and Huntsville & Elora Railroad Company, together with terms and conditions of purchase, see index.

## ORIGINAL CHARTER OF THE WINCHESTER & ALABAMA RAILROAD COMPANY.

[IN TENNESSEE.]

Acts Tenn., 1849-50, ch. 56, sec. 6.

**SEC. 6. Incorporation, name, general powers.**—*Be it enacted*, That the formation of a company is hereby authorized for the purpose of constructing a railroad from Winchester to the Alabama line, in the direction of Huntsville, Alabama, which company shall consist of the stockholders; and, when formed, shall, and they are hereby, constituted a body corporate, by the name and style of the Winchester & Alabama Railroad Company, and said company, by their corporate name, shall have power to sue and be sued, plead and be impleaded, in all the courts of this state, or the United States, and shall have and enjoy all the rights and privileges secured to the Nashville & Chattanooga Railroad Company, by an act of the general assembly passed December 11, 1845, and subject to all the restrictions contained in said charter, which road shall be built and constructed agreeable to the requirements of the aforesaid charter.

1. Sections 1-5, inclusive, of the act of the legislature in which this company was chartered, related to other matters. Section 6 of the act was the commencement of the *charter*.

2. **Right to extend road to Nashville & Chattanooga Railroad.**—This section was amended by Acts Tenn., 1851-2, ch. 43, so that the railroad incorporated above should extend from the town of Winchester to the *Nashville & Chattanooga Railroad*. Act passed December 5, 1851. Under this authority the road from Winchester to Decherd was built.

3. **General powers.**—As will be noticed, the above section of the charter confers specifically certain general powers, and, in addition, provides that it "shall have and enjoy all the rights and privileges secured to the *Nashville & Chattanooga Railroad Company*, and that the road shall be built and constructed agreeable to the requirements of said charter." This being so, the *Nashville, Chattanooga & St. Louis Railway*, having become the lawful owner and purchaser of the property, franchises, etc., of this company, is now entitled on that line to all the rights, privileges, and franchises of its own charter. For said privileges and franchises, see charter of *Nashville & Chattanooga Railroad Company*, ch. 1, herein.

4. **May lease road to Nashville & Chattanooga Railroad Company.**—By Acts Tenn., 1857-8, ch. 8, p. 5, this company was authorized to lease its road to the *Nashville & Chattanooga Railroad Company*.

5. **Incorporated in what states.**—In addition to this charter, granted by the State of Tennessee, the company was also incorporated in Alabama by Acts 1855-6, No. 312, p. 314, which was amended by Acts of 1857-8, p. 162. As that part of the road covered by the Alabama charter was never built, however, it is useless to insert said charter in this compilation. Reference is made to it here as a matter of history.

6. **Right to extend road to Fayetteville.**—This railway was chartered to run from Winchester to the state line, in the direction of Huntsville, Ala. When it had been built to a point at or near Elora, Tenn., the legislature of Tennessee passed an act allowing it to extend its road to Fayetteville, which was done. See Acts Tenn., 1851-2, ch. 206, p. 310, sec. 7, which act is inserted in the next chapter. The road from Elora to the state line was built under the original charter.

7. The legislature, in granting a charter to one railway, may lawfully confer upon it all the rights, franchises, etc., of another, by simply referring to it in the manner that this was done. See 8 Lea, 427.

**SEC. 7. Capital, value of shares, books opened, commissioners.**—*Be it enacted*, That the capital stock of said company shall be twenty-five thousand dollars, to be divided into shares of twenty-five dollars each; and books for subscription of stock in said railroad shall be opened on the first Monday of July, 1850, and kept open for one month every day, Sundays excepted, from 10 o'clock A. M. until 4 o'clock P. M., at the following places, and by the following persons, to wit: At Winchester, by James Harris, W. W. Brazeton, Maj. Wm. C. Venable, Benjamin Deckard, and Dr. Wallace Estill; at Salem, by William C. Handley, John P. White, George Mosely, Charles P. Blanton, and Robert C. Smith.

Value of  
shares.

Books  
opened.

Commission-  
ers.

This section was amended by Acts Tenn., 1851-2, ch. 43, so as to allow the increase of the capital stock of said company to seven hundred thousand dollars; and that to entitle any stockholder to act as a director he shall only be required to own stock to the amount of five hundred dollars. (Act passed December 5, 1851.)

**SEC. 8. Commissioners to act until directors elected.**—*Be it enacted*, That William E. Venable, Dr. William Estill, Jos.



W. Carter, Peter S. Deckard, Alfred Henderson, Thomas Finch, Hugh Francis, George W. White, Thomas H. Garner, George W. Hunt, David Arnett, S. S. Mathews, Thomas F. Mosely, Clinton A. Hunt, and John Handley, or a majority of them, be, and they are hereby, constituted a board of commissioners to superintend and manage all the affairs of said company, until it shall be fully organized, by the election of a board of directors, as prescribed by the charter of the Nashville & Chattanooga Railroad Company. (Acts Tenn., 1849-50, ch. 56, p. 167; passed February 9, 1850.

1. **Qualification of directors.**—By Acts 1859-60, ch. 90, p. 343, sec. 20, it was provided "that any person holding any amount of stock in the Winchester & Alabama Railroad Company shall be eligible to be a director in said road or company."

2. **May use T rail.**—By Acts Tenn., 1866-67, ch. 48, p. 130, this company was authorized, in rebuilding its road, to use solid T rails of not less than fifty pounds to the lineal yard, and all branch roads which may wish to use such bars, fifty pounds to the yard.

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## CHAPTER VIII.

### *DEED TO. AND ACTS RELATING TO THE WINCHESTER & ALABAMA RAILROAD COMPANY.*

#### **DEED FROM MEMPHIS & CHARLESTON RAILWAY COMPANY TO NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY COMPANY, OF WINCHESTER & ALABAMA RAILROAD AND THE McMINNVILLE & MANCHESTER RAILROAD.**

This deed, made and entered into by and between the Memphis & Charleston Railway Company, the party of the first part, and the Nashville, Chattanooga & St. Louis Railway Company, the party of the second part, both of said parties being corporations chartered by the State of Tennessee, witnesseth: The party of the first part, for and in consideration of the receipt from the party of the second part of three hundred and twenty thousand

dollars of six per cent. currency bonds, executed by the party of the second part, dated January 1, 1877, payable to the holder thereof, in lawful money of the United States, forty years after date, in the city of New York, with six per cent. interest coupons thereto attached, payable in manner, form, and place as said bonds, and on the following terms, to wit: Respectively, July 1, 1878, and at intervals of six months to and on the date of the maturity of said bonds, both such bonds and coupons secured by the first mortgage on the property hereby conveyed, this day executed by the party of the second part to Abrin Iselin and Richard T. Willson, of the city, county, and State of New York, and in further consideration of the party of the second part, paying to L. D. Hickerson and A. Power the sum of \$3,000, for their surrender of a lease held by them from the party of the first part, conveying all or part of the property hereby conveyed; and further consideration of the stipulations, undertaking, and obligation on the part of the party of the second part to be done and performed as herein-after stated, hath granted, bargained, sold, assigned, transferred, enfeoffed, and conveyed, and hereby bargains, sells, grants, assigns, transfers, enfeoffes, and conveys, unto the party of the second part, its successors and assigns forever, all and singular the following property, viz.:

The Winchester & Alabama Railroad, beginning at Decherd, Franklin county, Tenn., on the line of the Nashville, Chattanooga & St. Louis Railway, and extending to Fayetteville, in Lincoln county, Tenn., a distance of forty miles of completed road, more or less; also McMinnville & Manchester Road, beginning at Tullahoma, Coffee county, Tenn., and extending by way of Manchester to McMinnville, Warren county, Tenn., a distance of about thirty-four miles of completed road, making a total length of about seventy-four miles of railroad, together with all and singular appurtenances thereof, and all equipments, lands, tracks, lines, rails, bridges, ways, rights of way, and material, buildings, fences, erections, walls, fixtures, privileges, rights, interest, real estate, personal property, leaseholds, and other things of every kind, nature, and character belonging and

appertaining to said railroad; and also all the tools, incomes, uses, and profits to be had or demanded from the same or any part or portion thereof; and also all railway stations and depots, with all the appurtenances necessary and convenient for the sole, complete, and entire use and operation and maintenance of the said road or railways herein conveyed, or any part of them; and also all the rolling stock, locomotives, engines, tanks, cars, carriages, tools, and machinery on said roads, or any of them, at the date of this deed; and also all the improvements and additions made to any or all of said properties, es-

**Rights, privileges, immunities, and franchises conveyed.**

tates, roads, railways, and appurtenances also all the rights, privileges, immunities, and franchises of the party of the first part, pertaining to the roads and railways herein conveyed, or any of them, or the operation, use, and enjoyment thereof; and also all right to use the road, tracks, sidings, turnouts, and switches belonging and appertaining to said road hereby conveyed, or either of them, as fully and effectually as the party of the first part is or may be by law entitled to have, hold, and use the same, and the said party of the first part hereby covenants and agrees to and with the said party of the second part, its successors and assigns, that the title to the property hereby conveyed is free from all incumbrances, and that it will forever warrant and defend the title to said property against the lawful claims of all persons whomsoever.

The said party of the first part hereby also assigns, transfers, and conveys to the party of the second part its right of

**Indemnity bonds transferred.**

indemnity secured by the deposit of certain bonds in the Fourth National Bank in Nashville, Tenn., to indemnify the said party of the first part against loss, detriment, or damages from a certain suit of the United States against the McMinnville & Manchester Railway; and also the contract of indemnity made by the State of Tennessee with the party of the first part to indemnify against said suit.

As a further consideration for this conveyance, the party of the second part stipulates that it will run and manage the railroads as required by the contracts of purchase made by the



party of the first part with the State of Tennessee at the time it purchased them from said state.

In witness thereof, the said parties of the first and second parts, by their respective presidents and secretaries, pursuant to the authority granted by their respective boards of directors, have hereunto subscribed their names and affixed their corporate seals, this, the twenty-eighth day of July, 1877.

THE MEMPHIS & CHARLESTON RAILROAD COMPANY,

In presence of By R. T. WILSON, *President*.  
W. H. CLARKSON, as to R. T. WILSON, *President*.

[SEAL.] By THE MEMPHIS & CHARLESTON RAILWAY CO.,  
By T. R. CRUSE, *Secretary*.

[SEAL.] NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,  
R. C. BRANSFORD, By E. W. COLE, *President*.  
*Secretary Nashville, Chattanooga & St. Louis Railway.*

\* The foregoing deed, with acknowledgments, etc., is registered in Franklin county, in book 1, pp. 553-555; in Lincoln county, in book Z, pp. 216-221; in Coffee county, in book P, pp. 453, 454; and in Warren county, in book 8, pp. 296-299.

# **DECREE VESTING TITLE TO WINCHESTER & ALABAMA RAILROAD AND McMINNVILLE & MANCHESTER RAILROAD IN MEMPHIS & CHARLESTON RAILROAD COMPANY.**

THE STATE OF TENNESSEE *v.* THE EDGEFIELD & KENTUCKY  
RAILROAD COMPANY, McMINNVILLE & MANCHESTER, C. N.,  
WINCHESTER & ALABAMA, C. M., ET AL.

CHANCERY COURT AT NASHVILLE. TENN.

*Be it remembered*, That on the twenty-eighth day of June, 1875, before the Hon. Thomas Malone, presiding as special chancellor, regularly and legally appointed vice the Hon. William T. Cooper, chancellor, who is of counsel herein, this cause came on to be finally heard as to the Winchester & Alabama Railroad Company and the McMinnville & Manchester Railroad Company, on the report of the commissioners for the sale of delinquent railroad and accompanying vouchers therewith filed;

which report and vouchers being read, heard, and understood, and being unexcepted to, is in all things confirmed. And from said report, the accompanying vouchers, and the former proceedings, reports, and decrees of this court in the cause, it appears to the satisfaction of the court, and it is hereby ordered, adjudged, and decreed, that the Memphis & Charleston Railroad Company is, under the decrees, sales, and confirmative decrees of sales in this cause, the purchaser of the Winchester & Alabama Railroad and the McMinnville & Manchester Railroad, with their irons, equipments, right of way, real and personal property, franchises, and privileges; and that the said Memphis & Charleston Railroad Company has fully and entirely, in compliance with the sales aforesaid, paid to the State of Tennessee, as shown by said report and vouchers, the purchase price of said railroad in state bonds and money, as required by the terms of said sales and purchases and by the former decrees of this court, and this court being of opinion that the Memphis & Charleston Railroad Company is entitled to a final decree vesting said company with the absolute titles to said railroads, their property and franchises:

Now, therefore, it is hereby ordered, adjudged, and decreed, that all the right and title of the state and of all parties to this litigation, and especially of the Winchester & Alabama Railroad Company, its stockholders and creditors and all other persons interested therein, in and to the Winchester & Alabama Railroad, its property, real, personal and mixed, and all its franchises and privileges, be divested out of them and vested in the Memphis & Charleston Railroad Company forever, free from and finally discharged of all liens and charges existing heretofore, but subject to the terms, stipulations, and conditions of the contracts, except as to the purchase money paid, all of which is finally ordered and decreed. At the request of the Memphis & Charleston Railroad Company, the divesting and vesting of the title in and to the McMinnville & Manchester Railroad, its property and franchises, is deferred until the Memphis & Charleston Railroad Company directs and requests how and to whom it shall be made. The clerk and master will

furnish the Memphis & Charleston Railroad Company with a certified copy of the decree for registration.

The above decree may be found in minute book No. 2, p. 438, of the chancery court at Nashville, Tenn. It is also registered with proper certificates in the register's office of Warren county, in book 7, No. 7, pp. 72, 73; in Coffee county, in book vol. No. 2 (trust deeds, etc.), pp. 4 and 5.

## **ACTS TENNESSEE RELATING TO WINCHESTER & ALABAMA RAILROAD COMPANY.**

### **1. Winchester & Alabama Railroad Company authorized to extend road from Winchester to Nashville, Chattanooga & St. Louis Railway; capital increased.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the sixth section of an act passed the ninth day of February, 1850, ch. 56, entitled, "An act to charter a railroad from Nashville to the Alabama line," be, and the same is hereby, so amended as that the railroad incorporated by virtue of the provisions of the above recited act, called the Winchester & Alabama Railroad Company, shall extend from the town of Winchester to the Nashville & Chattanooga Railroad.

SEC. 2. *Be it enacted*, That the seventh section of said act of incorporation be, and the same is, amended so as to increase the capital stock of said company to seven hundred thousand dollars, and that, to entitle any stock-  
Capital increased.  
holder to act as a director in said company, he shall only be required to own stock to the amount of five hundred dollars. (Acts Tenn., 1851-52, ch. 43, p. 45; passed December 5, 1851.)

### **2. Winchester & Alabama Railroad Company authorized to construct road to Fayetteville, how.**

SEC. 7. *Be it further enacted*, That when fifteen thousand dollars additional stock in the Winchester & Alabama Railroad Company shall be taken by citizens of Lincoln county, or by others in their behalf, said company shall have power to extend their main trunk road to Fayetteville, in said county, with all the rights, powers, and privileges given to said company by



their original charter, and all the acts passed amendatory thereof, and said extension shall, to all intents and purposes, be and form a part of the main trunk of said road, as fully and effectually as if the same had been authorized by the original charter or the amendments as aforesaid; and should said company construct their said railroad to Fayetteville in the same manner and style of work as required by the charter aforesaid, then the charter herein granted to the Central Union Railroad shall be void. (Acts Tenn., 1851-2, ch. 206, p. 310, sec. 7; passed February 18, 1852.)

### **3. Resolution directing investigation of condition of road.**

By Acts Tenn., 1868-9, ch. 27, p. 379, the committee on internal improvements was directed to examine into the condition of this road and report to the general assembly.

### **4. State aid to the Winchester & Alabama Railroad.**

Many acts of the legislature of the State of Tennessee were passed authorizing state aid to be granted to the Winchester & Alabama Railroad for the purpose of building and equipping its road. The state aid was given by having the governor to indorse the bonds of the road on behalf of the state. These acts are quite lengthy, and are so seldom required, that for the purpose of space and economy it is not deemed advisable to insert them in full in this compilation, but simply to refer to the act and page where they can be found.

Below will be found all acts relating to this subject, set out in the order of their passage:

Acts 1851-2, ch. 151, governor authorized to issue bonds on certain conditions. For conditions, see act.

Acts 1853-4, ch. 131, sec. 1, state aid to the extent of \$10,000 a mile within the limits of state.

Acts 1855-6, ch. 54, p. 63, allows two years extra time for company to bring itself within provisions of Acts February 8, 1854.

Acts 1855-6, ch. 120, p. 143, sec. 9, bonds of state authorized to be issued to amount not exceeding \$50,000, to aid in

constructing a bridge across Elk river. See, also, pp. 146, 456, 479, for additional aid.

Acts 1855-6, ch. 235, p. 478, governor authorized to issue bonds to, under certain conditions.

Acts 1857-8, ch. 41, p. 67, sec. 2, grants state aid for bridges.

Acts 1865-6, ch. 14, p. 33, sec. 1, governor authorized to issue bonds to the W. & A. R. R. Co. to amount of \$372,000.

Acts 1866-7, ch. 12, p. 11, sec. 3, governor authorized to issue bonds to the W. & A. R. R. Co. to the extent of \$150,000.

Acts 1867-8, ch. 17, p. 14, sec. 3, governor authorized to issue bonds to the amount of \$300,000.

## CHAPTER IX.

## THE McMINNVILLE &amp; MANCHESTER RAILROAD COMPANY.

(NOW FORMS PART OF McMINNVILLE BRANCH.)

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—Under the general improvement laws of 1851–2, and amendments thereto, the State of Tennessee, through its governor, indorsed the bonds of the various railroads in the state, to aid in their construction, retaining a lien on the respective roads so assisted, as security therefor. Among the number was the McMinnvillle & Manchester Railroad Company. Default having been made in the payment of interest on the bonds issued for its benefit, a bill was filed in the chancery court at Nashville, Tenn., in the name of the state against the Edgefield & Kentucky Railroad Company *et al.*, to which the said McMinnvillle & Manchester Railroad Company was also made a defendant, seeking to enforce the state's lien or statutory mortgage. This bill was filed in pursuance of an act of the legislature of 1870–1, ch. 23, p. 25, authorizing the sale of all delinquent roads, the tenth section of which provided “that upon the sale of any of the franchises of either of the railroad companies by the commissioners, under the provisions of this act, all the *rights, privileges, and immunities* appertaining to the franchise so sold, under its act of *incorporation*, and the *amendments* thereto, and the general improvement law of the state, and acts amendatory thereof, shall be transferred to and vest in such purchaser, and the purchaser shall hold said franchise subject to all liens and liabilities in favor of the state, as now provided by law, against the railroad companies.”

On April 7, 1871, a decree was entered in said case in minute book T, p. 14, ordering the sale of said McMinnvillle & Manchester Railroad, its franchises, property, etc. It appears that great uncertainty existed as to the right of the state to



enforce said lien before the maturity of the bonds, and, in view of that fact, an agreement was entered into between all parties, and made a part of the decree authorizing the road to be sold, and the clerk and master to take proof and report what would be a fair and reasonable *minimum* value of the property and franchises of the road in bonds of the state, said value, however, in no event, to be fixed at less than \$300,000 in bonds of the state, with coupons of January, 1871, and subsequent coupons, attached. The decree further provided that the McMinnville & Manchester Railroad Company should be given the *exclusive* right, within sixty days from the date of the fixing of such minimum value by the court, to purchase said road at the price fixed. It was further agreed and made a part of the decree that the sale of the road should not prejudice the right of the railroad company to *prosecute and receive the benefit of any suit they had already commenced, or might thereafter commence, against any person or persons, or corporations, for debts, damages, demands, or choses in action that were then due said company, including their right to prosecute any receiver appointed by the state, etc.*

It will further appear from said decree that the intention of all parties, both of the state and defendants, was that the proceeds of this sale should be a *full satisfaction of all debts, demands, and liens the state held against said railroad company.*

The decree referred to above being quite lengthy, only a synopsis is here given. That part set out above in italics is important in throwing light upon the contention of the State of Tennessee in its McMinnville & Manchester Railroad claim, now pending before the committees on military affairs of the senate, and war claims of the house of representatives, of the fifty-fourth congress, which claim is also being contended for by the Nashville, Chattanooga & St. Louis Railway.

On July 1, 1871, the clerk and master reported that \$308,750 would be a fair and reasonable price for the road, but the court, upon exceptions filed, overruled the clerk and master's report, and fixed the minimum price at \$300,000 in bonds of the state with coupons of January, 1871, attached, and a decree was entered accordingly in minute book T, pp. 358, 359.

On July 6, 1871, the court adjudicated many matters involved. See decree in minute book T, p. 369.

On September 30, 1871, a decree was entered reciting, among other things, that the clerk and master had sold the McMinnville & Manchester Railroad to the company itself. See minute book T, p. 528.

The McMinnville & Manchester Railroad Company never complied with the terms of sale, and, on June 28, 1875, another decree was entered confirming the sale of this road and the Winchester & Alabama Railroad, together with their rights, franchises, etc., to the Memphis & Charleston Railroad Company. See minute book No. 2, p. 438, which decree was duly registered in the register's office of Warren county, in book 7, No. 7, pp. 72, 73; in Coffee county, in book vol. No. 2, trust deeds, etc., pp. 4, 5 [book E, p. 109]; in Franklin county, in book 6, p. 40, and in trust book No. 1, pp. 354-5-6.

1. This decree is also set out herein, in the preceding chapter, among the decrees, acts, etc., relating to the Winchester & Alabama Railroad Company.

2. It will be noticed that the above referred to decree did not divest and vest title to the McMinnville & Manchester Railroad in the Memphis & Charleston Railroad Company, but reserved that until the said Memphis & Charleston Railroad Company should determine *in whom the title should be vested*. Subsequently, however, on July 10, 1875, the Memphis & Charleston Railroad Company elected to have the title to this road also taken in its own name, and a decree was entered accordingly. See minute book No. 3, p. 58, which decree is also set out herein in next chapter.

On July 28, 1877, the Memphis & Charleston Railroad Company sold this road, together with the Winchester & Alabama Railroad, to the Nashville, Chattanooga & St. Louis Railway, for the sum of \$320,000 of 6 per cent. currency bonds executed by the latter company January 1, 1877, and other considerations. See deed in preceding chapter. This deed was duly acknowledged and registered in the register's office of Franklin county, in book 1, pp. 553-555; in Lincoln county, in book Z, pp. 216-221; in Coffee county, in book P, pp. 453, 454; and in Warren county, in book 8, pp. 296-299.

This purchase was legal. Under Acts Tenn., 1871, ch. 69, which superseded the Acts of 1871, ch. 22, it was provided that "every railroad corporation in this state, whether created under a general or special law, shall have the power to acquire by purchase or other lawful contract, and have, hold, use, and operate, any railroad, with its *franchises*, belonging to any other railroad company."

**What franchises, etc., passed to Nashville, Chattanooga & St. Louis Railway under this sale.**—In addition to the property, right of way, lands, tracks, etc., therein conveyed, the deed from the Memphis & Charleston Railroad Company of the McMinnville & Manchester Railroad, above referred to, specifically provided for the transfer of all the *rights, privileges, immunities, and franchises* of that company. These rights, franchises, etc., are largely set out in the charter, and amendments thereto, of the McMinnville & Manchester Railroad, which may be found further on in this chapter, but, by Acts Tenn., 1851-2, ch. 269, p. 462, sec. 5, all the rights, powers, and privileges of the *Nashville & Chattanooga Railroad charter* were also conferred upon that company. This being so, the Nashville, Chattanooga & St. Louis Railway, as the lawful purchaser thereof, is now entitled, on the line of that road, to all the rights, franchises, etc., of its own charter as well as those contained in the charter of the said McMinnville & Manchester Railroad Company, and amendments thereto.

1. For franchises, etc., contained in charter of Nashville & Chattanooga Railroad Company, see ch. 1, herein.

2. By decree of July 6, 1871, as entered in minute book Y, p. 369, of the chancery court at Nashville, Tenn., and decree of June 28, 1875, as entered in minute book No. 2, p. 438, all the rights, privileges, immunities, franchises, etc., of the McMinnville & Manchester Railroad Company were vested in the Memphis & Charleston Railroad Company. Hence, the latter company, under the Acts of 1871, ch. 69, and acts amendatory thereof, could make a legal transfer of the same to the Nashville, Chattanooga & St. Louis Railway.

3. The legislature may lawfully confer upon one company all the rights, franchises, etc., of another, by simply referring to it in the manner that this was done. See 8 Lea (Tenn.), 427.

**Width of right of way.**—The Nashville, Chattanooga & St. Louis Railway having become the lawful purchaser of the road, right of way, easements, franchises, etc., of the McMinnville & Manchester Railroad Company, as above explained, it is now entitled to the franchises contained in secs. 21 and 22 of its charter, as well as to secs. 23 and 24 of its own charter over the line of that road, which give one hundred feet on each side of the center of the road, in the absence of any contract with the *original* landowner to the contrary. (5 Pick., 293.)

For a general discussion of this and kindred subjects, together with the right and method of taking more than one hundred feet on each side



of the center of the road. when necessary for railroad purposes, see *Eminent Domain, Right of Way*, herein. Refer to index.

**Termini of McMinnville & Manchester Railroad.**—The McMinnville & Manchester Railroad Company was chartered by Acts Tenn., 1849–50, ch. 259, p. 497, to establish a communication by railroad between McMinnville, Tenn., and the Nashville & Chattanooga Railroad Company, in the direction of Manchester. The road was built under this charter from the said town of McMinnville through Manchester to Tullahoma, on the Nashville & Chattanooga Railroad. The line from McMinnville to Sparta was built under the charter of the Southwestern Railroad Company, though by Acts Tenn., 1851–2, ch. 269, p. 462, sec. 11, the charter of the McMinnville & Manchester Railroad Company was extended from McMinnville to Sparta, on condition that the people of White county should make the same to McMinnville. The road could have been extended from McMinnville to Sparta under this amendment, instead of under the charter of the Southwestern Railroad Company, as the people of White county subscribed bonds as therein provided for. It is possible that the road may have in fact been extended under this amendment, though the rights, franchises, etc., of the Southwestern Railroad Company were also purchased, which permitted the road to be so built. The line from Sparta to Bon Air was built under the charter of the Bon Air Railroad Company.

For charters of Southwestern Railroad Company and Bon Air Railroad Company, together with manner of acquiring them, refer to index.

**Distance built when purchased by Nashville, Chattanooga & St. Louis Railway.**—The entire line, from McMinnville to Tullahoma, had been constructed when purchased by the Nashville, Chattanooga & St. Louis Railway.

## ORIGINAL CHARTER OF McMINNVILLE & MANCHESTER RAILROAD COMPANY.

[Acts Tennessee 1849–50, ch. 259, p. 497.]

**SECTION 1. Incorporation, name, general powers.**—*Be it enacted by the General Assembly of the State of Tennessee, That*

for the purpose of establishing a communication by railroad between McMinnville and the Nashville & Chattanooga Railroad in the direction of Manchester, the formation of a company is hereby authorized, which, when formed, shall be a body corporate, by the name and style of the McMinnville & Manchester Railroad Company, and by said corporate name shall be capable in law to buy, receive by gift, hold, sell, and convey real and personal estate, as hereinafter provided, make contracts, sue and be sued, to make by-laws, and to do all lawful acts properly incident to a corporation, and necessary and proper to the transaction of the business for which it is incorporated, and to have and use a common seal, and the same to alter and destroy at its pleasure, and shall have perpetual succession of its members.

Name.

General powers.

1. **General powers.**—By Acts Tenn., 1851–52, ch. 269, p. 462, sec. 5, this charter was amended so that the company should have and enjoy all the rights, powers, and privileges, and be subject to all the liabilities and restrictions, prescribed in the charter of the Nashville & Chattanooga Railroad Company, and amendments thereto, except as provided otherwise therein. See act itself set out herein in next chapter.

2. **Scale of voting.**—By same acts, sec. 6, a *scale of voting* was provided. See act in next chapter.

3. **Location.**—By same act, sec. 10, the road was required to be located on the nearest and most practicable route to Nashville & Chattanooga Railroad Company from McMinnville, to be judged of by the president and directors. See act in next chapter.

4. By same act, sec. 11, the charter of this company was extended from McMinnville to Sparta, on condition that the people of White county make the same to McMinnville. See act in next chapter.

**SEC. 2. Capital, value of shares, books opened, commissioners.**—Books for subscription of forty thousand shares of the capital stock of said company, of twenty-five dollars each, shall be opened on the first Monday in April next, 1850, and shall be kept open for six days, between the hours of ten o'clock in the morning and four o'clock in the evening of each of those days, at the following places, and by the following commissioners, to wit: At McMinnville, by William White, William C. Smartt, Geo. R. Smartt, Stokely D. Rowan, L. D. Mercer, J. Woodla, R. A. Campbell, and Alexander Black; at Manchester, by W. P. Hickerson, W. R. Wilson, M. Stevens, W. Sherrel; at Hillsboro, by B. T. Hollins, Joseph Howe, and J. Charles.

Commissioners.

**Capital stock increased.**—By Acts 1851-2, ch. 269, p. 462, sec. 6, the capital stock of this company was increased to \$100,000, and the company was granted power to increase it to \$500,000.

**SEC. 3. Subscriptions to stock, payment.**—The said commissioners, or a majority of them, at each of the places aforesaid, shall receive subscription for stock in the said railroad company during the time the said books are directed to be kept open, and on each share so subscribed shall demand and receive the sum of fifty cents, without which the subscription shall be void.

**SEC. 4. Deposit of money, commissioners; incorporation perfected, when.**—As soon as the time for receiving subscription, as aforesaid, shall have expired, the said commissioners shall, respectively, deposit all the money so received by them in some incorporated bank redeeming its notes in specie, to the credit of the McMinnvile & Manchester Railroad Company, and subject to the order of the president of the board of commissioners hereinafter appointed, and shall also forward a correct list of all the subscribers to the said stock, with the number of shares each subscriber has taken, to a board of commissioners

**Commis-** to be composed of the following persons: William  
**sioners.** C. Smartt, W. M. White, George R. Smartt, David Ramsey, Sr., George Stroud, Thomas Mabry, W. P. Hickerson, W. R. Wilson, B. T. Hollins, and Joseph Howe, who may establish rules to govern their proceedings, choose their own president, and appoint such other officers and agents as they may think proper, and prescribe their duties, and who, or a majority of whom, shall meet at McMinnvile on the third Monday in January next, ascertain the whole number of shares taken in the said company, and publish the same in some newspaper printed in McMinnvile, on or before the fourth Monday in January next, and if the number of two thousand five hundred shares shall have been subscribed, on each of which there shall have been paid the sum of fifty cents, the McMinnvile & Manchester Railroad Company shall be regarded as  
**Incorporation.** formed, and thenceforth and from the day of closing the books of subscription as aforesaid; and said subscribers to the stock shall form a body politic and corporate in



deed and in law, by the name and for the purpose aforesaid, and in all things to be represented by the board of commissioners aforesaid, until the election of a board of directors, as hereinafter prescribed.

**SEC. 5. Books kept open, when; incorporation, commissioners.**—If, on closing the books aforesaid, the number of two thousand five hundred shares shall not have been subscribed, then, and in that case, the said board of commissioners, by themselves or their agents, may receive subscriptions till the sum of two thousand five hundred shares be taken; and whenever that number of shares shall be subscribed, the company shall be considered as formed, as having <sup>Incorporation.</sup> a corporate existence as aforesaid, and of which notice shall be given as hereinafter directed, and may proceed to survey the route for the road, and to make an estimate of the cost of its construction; nevertheless, no conclusive and binding location of the road shall be made by the board of commissioners, but the same shall be left to the determination of the first board of directors chosen by the stockholders, and the said board of commissioners may, by themselves or their agents, at such times and places as they may think proper, and upon such terms as to time and manner of payment as they may deem expedient, receive additional subscriptions until the number of two thousand five hundred shares shall have been subscribed, upon which the company may be formed, and the subscribers shall thenceforth form a body corporate as aforesaid; *Provided*, The same shall be done on or before the first day of January, 1852; and for the residue of the original number of forty thousand shares, the said corporation, when organized, may, in like manner, receive additional subscriptions.

**SEC. 6. Reduction of shares.**—In case more than forty thousand shares shall have been subscribed, on closing the books, when they are first opened, the shares shall be reduced to that number by deducting the surplus shares from the highest subscribers, placing them on equality of numbers as far as can be done, and, after such reduction, the holders of the remaining shares shall form the company, and be interested therein in

proportion to the number of shares which they may then respectively hold.

**SEC. 7. Money returned if shares not subscribed.**—If, on closing the books on the first day of January, 1852, the number of two thousand five hundred shares shall not have been

subscribed, the money paid by each subscriber shall  
**Scaling stock.** be returned to him by the said board of commissioners, after defraying the expenses of opening the books, and making a survey and map of the route, and estimate of the cost of the road, which said commissioners are hereby authorized to have made as soon as practicable.

**SEC. 8. President and directors, how chosen.**—The affairs of said company shall be managed by a board of directors, to  
**Board of directors.** consist of ———, who shall be chosen by the stockholders from their own body, and a president of the company shall be chosen by the directors from among their own members, in such a manner as the regulations of the corporation shall prescribe.

1. By Acts Tenn. 1855-56, ch. 181, p. 281, any stockholder of the company, without regard to the number of shares he owned, was made eligible to election as director.

2. The president and directors of the entire system of the Nashville, Chattanooga & St. Louis Railway, of which this road now forms a part, are elected under the charter of the Nashville, Chattanooga & St. Louis Railway. See section 8 of said charter, in chapter 1 herein.

**SEC. 9. Stockholders' first meeting, directors' election, by-laws, how enacted.**—As soon as the number of two thousand five hundred shares shall have been subscribed, it shall be the duty of the commissioners appointed to declare the same, to appoint a time for the stockholders to meet at McMinnville, and to give notice thereof by publication in ——— newspaper, at which time and place the said stockholders, in person or by

proxy, shall proceed to elect the directors of the  
**Elections; by-laws.** company and to enact all such regulations, rules, and by-laws as may be necessary for the government of the corporation and the transaction of its business. The persons elected directors at this meeting shall serve for such period, not exceeding one year, as the stockholders may direct, and at this meeting the stockholders shall fix on the day and the place

or places where the subsequent elections for directors shall be held, and such elections shall thenceforth be annually made; but if the day of annual elections should pass without any election of directors, the corporation shall not be thereby dissolved, but it shall be lawful on any other day to hold and make such elections, in such manner as may be prescribed by the by-laws of the corporation.

**SEC. 10. Vacancy in board, how filled.**—The board of directors may fill up all vacancies that may occur in it during the period for which their board shall have been elected; and in the absence of the president, may <sup>Vacancies.</sup> fill his place by the election of a president *pro tempore*.

See sec. 10 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1. herein, as all corporate business of the entire system is now transacted under that charter.

**SEC. 11. Contracts and agreements binding without seal.**—All contracts and agreements authenticated by the president of the board, shall be binding on the company without seal, or such other mode of authentication may be used as the company by their by-laws may adopt.

See notes to sec. 11 of charter of Nashville, Chattanooga & St. Louis Railway herein.

**SEC. 12. Liability of directors.**—The board of directors shall not exceed, in their contracts, the amount of the capital of the corporation and the funds which the company may have borrowed and placed at the disposal of the board; and, in case they should do so, the president and directors who may be present at the meeting at which such contracts so exceeding the amount aforesaid, shall be jointly and severally liable for the excess, both to the contractor and contractors and the corporation; *Provided*. That anyone may discharge himself from such liability by voting against such contract or contracts, and causing such vote to be recorded on the minutes of the board, and giving notice thereof to the next general meeting of the stockholders. <sup>Contracts not to exceed funds.</sup>

See notes to sec. 12 of charter of Nashville, Chattanooga & St. Louis Railway, herein.



**SEC. 13. Exclusive transportation, rate of charge.**—The said company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, and produce over the said railroad by them to be constructed; *Provided,*

**Rates of toll.** That the charge of transportation or conveyance shall not exceed thirty-five cents per hundred pounds on heavy articles, and two cents per cubic foot on articles of measurement, for every hundred miles, and five cents per mile for every passenger; *And provided also,* That said company may, when they see fit, farm out their right of transportation on said road, subject to the rates above mentioned.

See notes to sec. 14 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 14. Installments, suits for.**—The board of directors may call for the payment of twenty-four and a half dollars on

**Calls on stock.** each share of stock, in sums not exceeding two dollars in every thirty days; *Provided,* That twenty days' notice be given of such call, in at least one public newspaper of the state in which any of the stockholders may reside; and a failure to pay, or secure to be paid, according to the rules of the company, any of the installments so called, afore-said, shall induce a forfeiture of the share or shares on which default shall be so made, and all payments thereon, and the same shall vest in and belong to the company, and may be restored to the owner or owners by the board of directors, if they deem proper, on the payment of all arrears on such shares and legal

**Suits for.** interest thereon; or the directors may waive the forfeiture after ——— days' default, and sue the stockholders for the installments due, at their discretion.

**SEC. 15. Stock, how transferred.**—The stock of said company may be transferred in such manner and form as may be directed by the by-laws of the said corporation.

See notes to sec. 16 of charter of Nashville, Chattanooga & St. Louis Railway, chap. 1, herein.

**SEC. 16. Capital increased, how.**—The said company may at any time increase its capital to a sum sufficient to complete the said road and stock it with everything necessary to give it

full operation and effect, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the company and on the mortgage of its charter and works, and the manner in which the same shall be done in either case shall be prescribed by the stockholders at a general meeting; and any state, or any citizen, corporation, or company of this or any other state or country, except such companies or corporations as the state may own stock in, may subscribe for and hold stock in said company, with all the rights, and subject to all the liabilities of any other stockholder.

1. **Capital increased.**—By Acts Tenn., 1851-52, ch. 269, p. 462, sec. 6, the company was authorized to increase its capital to \$100,000, and to again increase it to \$500,000 if it saw fit.

2. See sec. 17 of charter of Nashville, Chattanooga & St. Louis Railway herein for method of increasing capital of general system.

**SEC. 17. Directors' annual report; may call general meetings.**—The board of directors shall, once in every year at least, make a full report on the state of the company and its affairs, to a general meeting of the stockholders, and oftener, if directed by a by-law, and shall have power to call a general meeting of the stockholders when the board may deem it expedient. Directors to make annual report.

**SEC. 18. Real property may be purchased for what.**—The said company may purchase, have, and hold in fee, or for a term of years, any lands, tenements, and hereditaments which may be necessary for said road, appurtenances thereto, or for the erection of depositories, storehouses, houses for the officers, servants, or agents of the company, or for procuring timber, stones, or other materials necessary for the construction of the road or its appurtenances, or for effecting transportation thereon.

See notes to sec. 21 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 19. Crossing and taking roads, water courses, and turnpikes.**—The said company shall have the right, when necessary, to construct the said road, or any branch thereof, across or along any public road or water course; *Provided*, That the said road and the navigation of such water course shall not be thereby obstructed; *And provided further*, That such railroad

shall not be located so near any turnpike road as to injure or prejudice the interest of the stockholders in such turnpike road, except upon such terms as may be agreed upon between the president and directors of the same on behalf of the stockholders.

See notes to section 22 of charter of Nashville, Chattanooga & St. Louis Railway, chapter 1, herein.

**SEC. 20. Purchase of bridges, roads, etc.**—The said company may purchase, have, and hold any bridge or turnpike road over which it may be necessary to carry the said railroad, and, when such purchase is made, to hold the said bridge or turnpike road on the same terms, and with all rights which belong to the individual, individuals or corporation from which such purchase may be made; *Provided*, That the said company shall not obstruct any public road without constructing another as convenient as may be.

See notes to sec. 23 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 21. Condemnation for right of way.**—Where any lands or rights of way may be required by the said company, for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commissioners, Damages for land taken, etc., how ascertained. or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated, and the said commissioners, before they act, shall severally take an oath, before some justice of the peace, faithfully and impartially to discharge the duty assigned them: in making the said valuation the commissioners shall take into consideration the loss or damage which may occur Commissioners to consider what. to the owner or owners in consequence of the land being taken, or the right of way surrendered, and also the benefit and advantage he, she, or they may receive from the construction or establishment of the railroad or works, and shall state particularly the nature and amount of each; and the excess of loss and damage over and above the benefit and advantage shall form the measure of the valuation of said land



or right of way. The proceedings of the said commissioners, accompanied with a full description of the said land or right of way, shall be returned under the hands and seals of a majority of the commissioners to the court from which the commission issued, there to remain of record. In case either party to the proceeding shall appeal from the valuation to the next session of the court granting the commission, and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged therewith in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted; and the land or right of way so valued by the commissioners or jury shall vest in the said company in fee simple so soon as the valuation may be paid, or when refused, may be tendered. Where there may be an appeal, as aforesaid, from the valuation of commissioners by either of the parties, the same shall not prevent the works intended to be constructed from proceeding; but where an appeal is by the company requiring the surrender, they shall be at liberty to proceed in their works only on condition of giving to the opposite party a bond, with good security, to be approved of by the clerk of the court where the valuation is returned, in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest in case the same be sustained, and, in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court; *Provided*, That when the land cannot be had by gift or purchase, the operations of the work are not to be hindered or delayed during the pendency of any proceeding to assess its value as aforesaid, nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

**Appeal.**

On what conditions work to proceed pending litigation.

**Damages.**

Work not to be delayed by legal process.

See notes to sec. 24 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein, for full discussion of this section. The sections are the same.

**SEC. 22. In absence of contract, right of way one hundred feet, when.**—In the absence of any contract with the said com-

pany, in relation to any lands through which the said road may pass, signed by the owner thereof, or by his agent, or claimant, or any person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with a space of one hundred feet on each side of the center of the said road, has been granted to the company by the owner thereof; and the said company shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used only for the purposes of the road, and no longer, unless the persons or person owning the said road at the time that part of the road which may be on the land was finished, or those claiming under him, her, or them, shall apply for an assessment for the value of the said lands, as hereinbefore directed, within five years next after that part of said road was finished; and in case the said owner or owners, or those claiming under him, her, or them, shall not apply for such assessment within five years next after the said part was finished, he, she, or they shall be forever barred from recovering the said land or having any assessment or compensation therefor; *Provided*, Nothing herein contained shall affect the right of *femes covert*, or infants until two years after the removal of their respective disabilities.

Rights, when presumed.

Right of way 100 ft., when.

Minors and femes covert barred in two years after removal of disability.

See notes to sec. 25 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein, for full discussion of this section. The sections are the same.

**SEC. 23. Forfeiture and penalty for intrusion.**—If any person shall intrude upon the said railroad, or any part thereof, by any manner of use thereof, or of the rights and privileges connected therewith, without the permission or contrary to the will of said company, he, she, or they shall forthwith forfeit to the said company all the vehicles that may be so intruded on said road, and the same may be recovered by suit at law; and the person or persons so intruding may be indicted also for misdemeanor, and, upon conviction, fined and imprisoned by any court of competent jurisdiction.

Intrusion.

Penalty.

See 3 Hum. (Tenn.), 481-483, for misdemeanor.

**SEC. 24. Obstructing or damaging road or bridge, punishment.**—If any person shall willfully and maliciously destroy or in any manner hurt, damage, or destroy the said railroad, or any bridge, or any vehicle used for or in transportation thereon, such person or persons so offending shall be liable to be indicted therefor, and, on conviction, shall be imprisoned not more than six months nor less than one month, and pay a fine not less than twenty dollars, and shall be further liable to pay all the expenses of repairing the same.

**Punishment.**

See notes to section 27 of charter of Nashville, Chattanooga & St. Louis Railway, chapter 1, herein.

**SEC. 25. Obstruction a public nuisance.**—Every obstruction to the safe and free passage of vehicles on the said road shall be deemed a public nuisance, and may be abated as such by any officer, agent, or servant of the company, and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

The word "obstruction," as used by railroad men, is not such a term of art as requires explanation by an expert. 6 Heis. (Tenn.), 347. See, also, 3 Head, 522; 1 Bax., 55.

**SEC. 26. Storage charges allowed, when.**—The said company shall have the right to take, at the storehouse they may establish or annex to their railroad, all goods, wares, merchandise, and produce intended for transportation, prescribe the rules of priority, charge and receive such just and reasonable compensation for storage as they may, by rules, establish (which they shall cause to be published), or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation; *Provided*, That the said company shall not charge or receive storage on goods, wares, merchandise, and produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

**Rules of transportation.**

**Not to charge, when.**

See notes to sec. 29 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 27. Dividends paid, when.**—The profits of the company,



or so much thereof as the board of directors may deem advisable, shall, when the affairs of the company will permit, be semiannually divided among the stockholders in proportion to the stock each may hold.

See notes to sec. 30 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein, as all dividends are now paid under that charter.

**SEC. 28. Banking prohibited; may insure.**—The said company is hereby expressly prohibited from carrying on any banking operation, but may effect insurance on lives and property transported on the road.

**SEC. 29. Crossings of roads and lands.**—Whenever in the construction of said road it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way, so as not to impede the passage or transportation of persons or property along the same, or where it shall be necessary to pass through the land of any individual, it shall be their duty to provide for such individual a proper wagon way or ways across said road from one part of his land to another.

See notes to sec. 32 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 30. Additional powers.**—The said company shall have and possess such additional powers as may be convenient for the due and successful execution of the powers granted in this charter and for the successful construction and management of the work.

See notes to section 33 of charter of Nashville, Chattanooga & St. Louis Railway, chapter 1, herein.

**SEC. 31. Charter, how amended.**—This charter shall be amendable from time to time by the legislature whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments.

See notes to section 34 of charter of Nashville, Chattanooga & St. Louis Railway, chapter 1, herein, for full discussion of this section.

**SEC. 32. Directors trustees in case of dissolution.**—If, by decree or otherwise, the said corporation shall be dissolved, the president and directors of said company are created trustees,

with such powers only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and distribute the property and effects of the company to those who may be entitled thereto under the charter.

See notes to sec. 37 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 33. Exemption from taxation.**—The capital stock of the company shall be exempt from taxation until the dividends amount to six per cent., and the road, with all its fixtures and appurtenances, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer.

See notes to sec. 38 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 34. Road to be commenced and completed, when.**—The railroad authorized by this act shall be commenced within three years after the passage of this act, and shall be finished within six years thereafter; otherwise, the charter hereby granted shall be void. (Acts Tenn., 1849–50, ch. 259, p. 497; passed February 4, 1850.)

By Acts 1851–2, ch. 269, p. 462, sec. 8, the company was granted ten years to complete the road and five years to begin the construction thereof.

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## CHAPTER X.

### *DECREES AND ACTS RELATING TO AND AMENDING CHARTER OF McMINNVILLE & MANCHESTER RAILROAD COMPANY.*

### **DECREE VESTING TITLE TO McMINNVILLE & MANCHESTER RAILROAD IN MEMPHIS & CHARLESTON RAILROAD COMPANY.**

#### **STATE OF TENNESSEE *v.* EDGEFIELD & KENTUCKY RAILROAD COMPANY ET AL.**

This cause being again heard on this tenth of July, 1875, before the Hon. Thos. H. Malone, special chancellor, by reason of the incompetency of the chancellor, upon the previous proceedings and the equities reserved by the decree entered on a

former day of the present term, touching the vesting of the title of the McMinnville & Manchester Railroad, its property and franchises, by which such vesting was suspended until the Memphis & Charleston Railroad Company shall direct to whom the title is to be made, and it now appearing from a letter of W. Y. C. Humes, the solicitor of the Memphis & Charleston Railroad Company in this cause, to one of the solicitors of the state, under date of July 8, 1875, and filed with the papers, that the Memphis & Charleston Railroad Company desires and now directs that the title be made to it:

It is therefore ordered, adjudged, and decreed that the title to the said McMinnville & Manchester Railroad Company, its property and franchises, as sold by the state commissioners, be, and the same is hereby, vested in the Memphis & Charleston Railroad Company, its successors and assigns. And the clerk and master is authorized to give to the purchasers, for registration, certified copies of this and the former decree at this term, upon demand and the payment of the proper charges.

THOS. H. MALONE, *Special Chancellor*.

Entered July 10, 1875, book No. 3, p. 58, chancery court, Nashville, Tenn.

The McMinnville & Manchester Railroad was first bought by the company itself under the proceedings instituted by the state to sell the road, as explained in preceding chapter. As the company failed to comply with the terms of sale, however, the road was again put up and sold, when the Memphis & Charleston Railroad Company bid it in, and on June 28, 1875, a decree was entered confirming the sale of the road, franchises, etc., to said company. See minute book No. 2, p. 433, of the Chancery Court at Nashville, Tenn.

Said decree was registered in Warren county, in book 7, p. 72, 73; and in Coffee county, in book vol. 2 (trust deeds, etc.), pp. 4, 5.

It will be noticed from the decree, however, which is also inserted herein in ch. 8, that the Memphis & Charleston Railroad Company did not have the title *vested* in it in that decree, but reserved the matter. The above decree, therefore, was necessary.

**Charter amended; rights, powers, and privileges of Nashville & Chattanooga Railroad Company conferred on McMinnville & Manchester Railroad Company; capital increased; scale of voting provided; commissioners; route located; may extend to Sparta, how.**

SECTION 5. *Be it further enacted*, That the charter of the McMinnville & Manchester Railroad Company be so amended



as that said company shall have and enjoy all the rights, powers, and privileges and be subject to all the liabilities and restrictions prescribed in the charter of the Nashville & Chattanooga Railroad Company and in the various amendments thereto, except as herein further provided.

SEC. 6. *Be it enacted*, That the capital stock of said company shall be one hundred thousand dollars, to be divided into shares of twenty-five dollars each, and the company shall have power to increase the capital stock to Capital stock increased. five hundred thousand dollars; and when one thousand shares of the capital stock are subscribed for, said company may organize by the election of a board of directors, who shall elect a president from their number, as prescribed in the charter of the Nashville & Chattanooga Railroad Company, and at all meetings of the stockholders, when a vote is to be taken, stockholders may vote in person or by proxy, and, in the election of directors and in voting on all questions which come before a meeting of stockholders, or which may be submitted to a decision of the stockholders in any other manner, the vote shall be taken according to the following scale: The owner of one or two shares shall be entitled to one vote; the owner of not less than three nor more than four shares Scale of voting. shall be entitled to two votes; the owner of not less than five nor more than six shares shall be entitled to three votes; the owner of not less than seven nor more than eight shares, to four votes; the owner of not less than nine nor more than eleven shares, to five votes; the owner of not less than twelve nor more than fifteen shares, to six votes; the owner of not less than sixteen shares nor more than twenty, to seven votes; the owner of not less than twenty-one shares nor more than twenty-six, to eight votes; the owner of not less than twenty-seven nor more than thirty-three shares, to nine votes; the owner of not less than thirty-four nor more than forty shares, to ten votes; and the owner of every ten shares above forty shall be entitled therefor to one vote; *Provided*, That no individual, corporation, or company shall be entitled to more than five hundred votes.

SEC. 7. *Be it enacted*, That S. D. Rowan, L. D. Mercer, R. B. Cain, Wm. Smart, Dr. Davis, Wm. H. Colson, M. Hoover, C. Colson, Lawson Wileman, Joseph M. Howe, W. P. Hickerson, — Bashaw, R. B. Anderson, John Charles, Alexander E. Patton, Herndon Greene, Peter S. Decherd, Thomas C. Smart, H. H. Harrison, M. Hill, H. L. W. Hill, and Robert Webb be, and they are hereby, constituted a board of commissioners, any seven of whom may act, to manage all the affairs of said company until it shall be organized by the election of a board of directors, as aforesaid; to procure the subscription of stock, by the appointment of an agent or agents for that purpose, or in such manner as they may deem best; to provide for experimental surveys of routes for said railroad, and for the payment for making said surveys and for procuring said subscriptions, out of such calls on the stock subscribed for as they may deem advisable, out of the funds hereafter provided for, but they shall not be compelled to require any part of the stock subscribed for to be paid in cash, at the time it is subscribed for; and at all meetings of said commissioners they may vote in person or by proxy in relation to the affairs of the company before its organization as aforesaid, and they shall require each subscriber to execute his note to the company for one dollar for each share of stock subscribed for by him, and it shall be lawful for the same to be sued for and recovered of such subscriber, in the name of the company, whether organized or not, to be used when paid in defraying the expenses incurred by the commissioners in the manner aforesaid.

SEC. 8. *Be it further enacted*, That said company shall have ten years to complete their said railroad, and shall have five years to begin the construction of said road; and whenever five miles of the road shall have been completed, said company may carry on its regular business on the same.

SEC. 9. *Be it enacted*, That anything in the charter of the McMinnville & Manchester Railroad Company, inconsistent with the provisions of this act, is hereby repealed.

SEC. 10. *Be it enacted*, That in the location of the McMinnville & Manchester Railroad, it shall be located on the nearest and most practical route to the Nashville & Chattanooga Railroad from McMinnville, to be judged of <sup>Route of.</sup> by the president and directors; *Provided*, That the thirteenth section of the act incorporating the Nashville & Chattanooga Railroad Company, shall not be a part of the charter of the said Southwestern Railroad Company, nor McMinnville & Manchester Railroad Company; *And provided*, That nothing in this act shall be so construed as to authorize the governor to indorse the bonds of said companies, nor shall the name of the road hereby incorporated control its location, but the same shall be left to the discretion of the president and board of directors.

SEC. 11. *Be it enacted*, That the charter of said road shall be continued from McMinnville to Sparta, on condition that the people of White county make the same to McMinnville. (Acts Tenn., 1851-2, ch. 269, p. 462; <sup>May extend to Sparta, how.</sup> passed January 31, 1852.)

### **Charter amended, any stockholder may be director.**

SEC. 58. *Be it further enacted*, That from and after the passage of this act, any stockholder of the McMinnville & Manchester Railroad Company shall be eligible to election as director of said company, without regard to the number of shares of stock owned by him in said company. (Acts Tenn., 1855-6, ch. 181, p. 281; passed February 27, 1856.)

### **Town of McMinnville authorized to subscribe for stock in McMinnville & Manchester Railroad Company. how.**

SEC. 12. *Be it enacted*, That the mayor and aldermen of the town of McMinnville, in the county of Warren, in this state, shall have the same power, and in the same manner, to subscribe for stock in the McMinnville & Manchester Railroad Company, as the mayor and aldermen of the town of Franklin have to subscribe for stock in the Tennessee & Alabama Railroad Company or in any railroad company running near said town. (Acts Tenn., 1855-6, ch. 204, p. 384; passed February 26, 1855.)



**Purchasers of McMinnville & Manchester Railroad at state sale authorized to be credited with any amount recovered by the United States, in suit against it, for iron, rails, etc., furnished.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That, in the event the United States shall recover any amount in the suit for the sum of sixty-seven thousand dollars, which the said United States has brought in the federal court, at Nashville, against the McMinnville & Manchester Railroad Company for the value of iron, rails, material, and rolling stock alleged to have been furnished said company, and to secure which a lien was retained, with the right reserved to the United States to put a receiver in charge of said railroad, that the commissioners appointed to sell the delinquent railroads in the State of Tennessee be directed and authorized to credit the said company who purchased said road, with the amount of such recovery; *Provided*, That said McMinnville & Manchester Railroad Company shall not have the benefit of this act unless it, in good faith and to the satisfaction of said commissioners, makes all proper and necessary defenses to said suit brought against it by the United States.

SEC. 2. *Be it further enacted*, That this act take effect from and after its passage, the public welfare requiring it. (Acts Tenn., 1872, ex. ses., p. 39, ch. 16; passed March 30, 1872.)

**Claims between State of Tennessee and United States in regard to McMinnville & Manchester Railroad authorized to be settled, how.**

WHEREAS, There are large and unsettled claims between the State of Tennessee and the United States government; and,

WHEREAS, It is important that said claims should be adjusted; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the governor of the State of Tennessee be, and he is hereby, fully authorized and empowered to settle with the government of the United States all the unadjusted claims between the Memphis, Clarksville & Louisville Railroad and said government: also all claims the State of Tennessee and

the McMinnville & Manchester Railroad Company hold against the government of the United States, and all claims the United States holds against said McMinnville & Manchester Railroad Company for damages done the McMinnville & Manchester Railroad, or damages done said company by the United States, or for iron, engines, rails, and other materials furnished said company; and, also, all other claims the State of Tennessee holds against the United States government in connection with Tennessee railroad interests.

SEC. 2. . . . .

SEC. 3. *Be it further enacted*, That this act take effect from and after its passage, the public welfare requiring it. (Acts Tenn., 1872, ex. ses., p. 35, ch. 13; passed March 30, 1872.)

### **Comptroller authorized to settle with B. J. Hill, president and receiver of the McMinnville & Manchester Railroad.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the comptroller be authorized and directed to make full settlement with B. J. Hill, as receiver and late president of the McMinnville & Manchester Railroad.

SEC. 2. *Be it further enacted*, That when said settlement shall have been made on or upon B. J. Hill's sworn statement, if there should be anything due said receiver for balance of salary, or for money expended out of his own private means as such receiver for said road, that the comptroller issue his warrant upon the treasurer in favor of B. J. Hill, said receiver, for whatever amount found to be due him on final settlement.

SEC. 3. *Be it further enacted*, That this act take effect from and after its passage, the public welfare requiring it. (Acts Tenn., 1875, ch. 52, p. 49; passed March 11, 1875.)

**State aid to McMinnville & Manchester Railroad.**—Many acts of the legislature were passed authorizing state aid to be granted to the McMinnville & Manchester Railroad for the purpose of building and equipping its road. The state aid was given by having the governor to indorse the bonds of the road on behalf of the state. These acts are quite lengthy, and are so seldom required that for the purpose of space and economy

it is not deemed advisable to insert them in full in this compilation, but simply to refer to the act and page where they can be found.

Below will be found all acts relating to this subject, set out in the order of their passage:

Acts 1851-2, ch. 151, governor authorized to issue coupon bonds, for amount not exceeding \$8,000 per mile, on certain conditions. (For conditions, see act.)

Acts 1853-4, ch. 131, sec. 1, state aid to the extent of \$10,000 a mile.

Acts 1855-6, ch. 120, p. 143, sec. 13, governor authorized to issue bonds to amount of \$30,000, in constructing bridge across Barren Fork of Collins river, Hickory creek, and Duck river.

Acts 1857-8, ch. 118, p. 301, governor authorized to issue bonds to.

Acts 1865-6, ch. 14, p. 33, governor authorized to issue bonds to the Manchester & McMinnville Railroad to the amount of \$346,000.

Acts 1865-6, ch. 49, p. 75, governor authorized to issue bonds to amount of \$54,000.

### **Resolution authorizing postponement of sale of McMinnville & Manchester Railroad.**

WHEREAS, The purchasers of the McMinnville & Manchester railroad have made one payment of seventy-five thousand dollars, and are now in default one payment, for which the road is now advertised for resale by the state commissioners for the sale of delinquent railroads; and,

WHEREAS, Since the sale and purchase aforesaid, the real purchasers, the Memphis & Charleston Railroad Company, in the lease of its main trunk, impaired, to some extent, its power to raise money; but,

WHEREAS, The purchasers have come forward and shown not only an honest purpose to comply with the contract, but a determination to do it if some indulgence is shown; therefore,

*Resolved by the Senate and House of Representatives, That*



the state commissioners for the sale of delinquent railroads be, and they are hereby, instructed to postpone the resale of the McMinnville & Manchester Railroad until after the first of May of the present year, provided the purchasers, and such of the sureties as will be satisfactory to the commissioners, shall agree, in writing, to the same, and that the postponement shall in no way affect the rights of the state against them on their bond for the full amount which may be due thereon, nor the right of the state to enforce its lien upon the property. (Acts Tenn., 1873, p. 202; approved January 28, 1873.)

## CHAPTER XI.

## THE SOUTHWESTERN RAILROAD COMPANY.

. (NOW FORMS PART OF MCMINNVILLE BRANCH.)

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—Under the general improvement laws of 1851–52, and amendments thereto, the State of Tennessee, through its governor, indorsed the bonds of the various railroads in the state, to aid in their construction, retaining a lien on the respective roads so assisted as security therefor; among the number was the Southwestern Railroad Company. Default having been made in the payment of interest on the bonds issued for its benefit, a bill was filed in the chancery court at Nashville, Tenn., in the name of the state against the Edgefield & Kentucky Railroad Company *et als.*, to which the said Southwestern Railroad Company was also made a defendant, seeking to enforce the state's lien or statutory mortgage. This bill was filed, as explained in other chapters, in pursuance of an act of the legislature of 1870–71, ch. 23, p. 25, authorizing the sale of all delinquent roads, the tenth section of which provided “that upon sale of any of the franchises of either of the railroad companies by the commissioners under the provisions of this act, all the rights, privileges, and immunities appertaining to the franchise so sold, under its act of incorporation, and the amendments thereto, and the general improvement laws of the state and acts amendatory thereof, shall be transferred to and vest in such purchaser, and the purchaser shall hold said franchise subject to all liens and liabilities in favor of the state, as now provided by law against the railroad companies.

On June 8, 1871, a *pro confesso* was taken against the said Southwestern Railroad Company, as per decree entered in minute book T, p. 406, and on July 6, following, the amount of in-

debtedness of said road to the state was adjudicated at \$553,790 and the road ordered sold. See minute book T, p. 372.

At the sale, the Southwestern Railroad Company itself became purchaser of its own road, franchises, etc. See minute book T, p. 507.

Subsequently it sold them to the Nashville, Chattanooga & St. Louis Railway. At the date of the latter sale, however, only a small part of the road had been constructed, but the Nashville, Chattanooga & St. Louis Railway, under and by virtue of the rights, franchises, etc., it had acquired by the purchase of the road, together with the rights and franchises it had acquired by its purchase of the McMinnville & Manchester Railroad, as heretofore explained in chapter 9, completed the road to Sparta. The road from Sparta to Bon Air was built subsequently, under the charter of the Bon Air Railroad Company.

1. For charter of Bon Air Railroad Company, and how it was acquired, see index.

2. The Nashville, Chattanooga & St. Louis Railway could have extended the road from McMinnville to Sparta under the charter and amendments of the McMinnville & Manchester Railroad Company, as by Acts Tenn., 1851-2, ch. 269, p. 462, sec. 11, the charter of said road was amended so as to permit it to be done, under the condition therein set out, which was subsequently performed.

3. The purchase of this road and its franchises by the Nashville, Chattanooga & St. Louis Railway was legal. Under the Acts of 1871, ch. 69, which superseded the Acts of 1871, ch. 22, it was provided that "every railroad corporation in this state, whether created under a general or special law, shall have power to acquire by purchase, or other lawful contract, and have, hold, use, and operate any railroad, with its *franchises*, belonging to any other railroad company."

**Width of right of way.**—The Nashville, Chattanooga & St. Louis Railway having become the lawful purchaser of the road, right of way, easements, franchises, etc., of this company, together with those of the McMinnville & Manchester Railroad Company, it is now entitled to all the rights, franchises, etc., contained in their charters. Section 1 of the charter of the Southwestern Railroad Company gave it all the rights, powers, and privileges contained in the charter of the Nashville & Chattanooga Railroad Company. Sections 23 and 24 of the latter charter gave a right of way of one hundred feet on each side of the center of the road in the absence of any written



contract with the *original* landowners to the contrary. 5 Pick., 293. Sections 21 and 22 of the charter of the McMinnville & Manchester Railroad Company gave the same number of feet, and by Acts 1851-2, ch. 269, p. 462, sec. 11, the said charter was extended over the proposed line from McMinnville to Sparta. This being so, the Nashville, Chattanooga & St. Louis Railway would now be entitled, over that line, to the two hundred feet width of right of way, whether the road was extended under one charter or the other.

1. Independent of the franchises contained in the charter of this company and the McMinnville & Manchester Railroad Company, the Nashville, Chattanooga & St. Louis Railway would doubtless now be entitled, over the line of this road, to one hundred feet on each side of the center of the road, for by Acts Tenn., 1849-50, ch. 266. sec. 3, it was provided that all branches of the Nashville & Chattanooga Railroad Company, as may be made, shall have all the rights and privileges, and shall be placed in all respects on the same footing, with the said Nashville & Chattanooga Railroad Company.

2. The road from Sparta to Bon Air was built under the charter of the Bon Air Railroad Company. For charter, how road acquired, and width of right of way of that branch, see index.

3. For a general discussion of this and kindred subjects, together with the right and method of taking more than two hundred feet when necessary for railroad purposes, see *Eminent Domain, Right of Way*, herein. Refer to index.

## ORIGINAL CHARTER OF THE SOUTHWESTERN RAILROAD COMPANY.

(Acts Tenn., 1851-52, ch. 269, p. 462.)

**SECTION 1. Incorporation, name, general powers.**—*Be it enacted by the General Assembly of the State of Tennessee, That* a body politic and corporate is hereby constituted by the name and style of the Southwestern Railroad Company, for the purpose of constructing a railroad from Danville, in the State of Kentucky, to connect with the McMinnville & Manchester Railroad, and said company shall have and enjoy all the rights, powers, and privileges, and be subject to all the liabilities and restrictions, prescribed in the charter of the Nashville & Chattanooga Railroad Company, and in the various amendments thereto, except as herein further provided.

1. It will be noticed that the above section conferred upon the company all the rights, powers, and privileges, and subjected it to all the liabilities and restrictions, of the Nashville & Chattanooga Railroad Com-

pany's charter. For full discussion thereof, see chapter 1, herein. See, also, index for particular power desired.

2. The legislature may lawfully confer upon one company all the rights, powers, franchises, etc., of another by simply referring to it in the manner that this was done. See 8 Lea (Tenn.), 427.

3. By Acts 1868-69, ch. 11, p. 93, sec. 25, the Nashville & Cincinnati Railroad Company was granted the privilege of uniting on a common track with this company from the junction of the Tennessee & Pacific Railroad with this company's railroad to Danville, Ky., if companies agreed. See act in next chapter.

4. By Acts Tenn., 1849-50, ch. 259, p. 497, another company was chartered, known as the Sparta & McMinnville Railroad Company, for the purpose of constructing a railroad from McMinnville to Sparta, but that company was never organized.

**SEC. 2. Capital, increase of value of shares, election of president and directors, voting.**—*Be it enacted*, That the capital stock of said company shall be one million of dollars, to be divided into shares of twenty-five dollars each, and the company shall have power to increase the capital stock to three millions of dollars; and, whenever five thousand shares of the capital stock are subscribed for, said company may organize by the election of a board of directors, who shall elect a president from their number, as prescribed in the charter of the Nashville & Chattanooga Railroad Company, and, at all meetings of the stockholders, when a vote is to be taken, each stockholder shall be entitled to one vote for One vote for each share. each share of stock held by him.

By Acts Tenn., 1855-56, ch. 229, p. 469, secs. 4, 9, the charter of this company was amended so that any stockholder should be eligible as a director, or to any other office, without reference to the amount of his stock.

**SEC. 3. Commissioners, powers of, subscriptions to stock.**—*Be it enacted*, That A. Philips, E. N. Cullom, R. Kenner, J. L. Goodall, O. S. Woods, R. B. Cain, Thomas E. Bramlett, D. Haggard, J. H. West, J. L. Quarles, R. Blain, J. F. Bell, W. Lair, C. B. Coffee, and M. J. Brien be, and they are hereby, constituted a board of commissioners, a majority of whom may act, to manage all the affairs of said company until it shall be organized by the election of a board of directors as aforesaid, to procure the subscriptions of stock, by the appointment of an agent or agents for that purpose, or in such manner as they may deem best; to provide for experimental Surveys. surveys of routes for such railroad, and for the

payment for making said surveys, and for procuring said subscriptions, out of such calls on the stock subscribed for, as they may deem advisable, out of the funds hereafter provided for, but they shall not be compelled to require any part of the stock subscribed for to be paid in cash at the time it is subscribed for.

At all meetings of said commissioners, they may vote in person or by proxy in relation to the affairs of the company, before its organization as aforesaid, and they shall require each subscriber to execute his note to the company for one dollar for each share subscribed for by him, and it shall be lawful for the same to be sued for and recovered of such subscriber in the name of the company, whether organized or not, to be used, when paid, in defraying the expenses incurred by the commissioners in the manner aforesaid.

**Commissioners, how to vote.**

**Subscriber to execute notes for subscription.**

**SEC. 4. Road to commence and be completed, when; integral parts.**—*Be it further enacted*, That said company shall have ten years to complete their said railroad, and whenever five miles of the road shall have been completed said company may carry on its regular business upon the same. And said company shall have five years in which to begin the construction of said railroad. (Acts Tenn., 1851–2, ch. 269, p. 462; passed January 31, 1852.)

1. By Acts Tenn., 1853–4, ch. 131, p. 205, sec. 11, the further time of two years was given this company to bring itself within the provisions of the act entitled "An act to establish a system of internal improvements in this state."

2. By Acts Tenn., 1855–6, ch. 60, p. 67, sec. 5, an additional two years was granted as above.

3. By Acts Tenn., 1857–8, ch. 130, p. 326, sec. 2, an additional two years was granted as above.

4. **Extra time granted to complete road.**—By Acts Tenn., 1865–6, ch. 107, p. 295, this company was granted the further time of ten years to complete its road.

5. By Acts 1859–60, ch. 78, p. 305, sec. 1, the further time of two years was granted this company to bring itself within internal improvement acts.



## CHAPTER XII.

## ACTS OF TENNESSEE RELATING TO SOUTHWESTERN RAILROAD COMPANY.

**Nashville & Cincinnati Railroad Company authorized to unite on common track with Southwestern Railroad Company, how.**

SEC. 25. *Be it further enacted*, That the Nashville & Cincinnati Railroad Company may unite on a common track with the Southwestern Railroad Company from the junction of the Tennessee & Pacific Railroad with the Southwestern from said junction to Danville, Kentucky, if the companies shall both agree on said union or consolidation, by filing a written statement of the contract with the governor of the State of Tennessee, which contract shall be made a matter of record, and said contract shall be valid and binding in law and equity, and both companies shall have all the rights and privileges now granted by law to each company, except that there shall be but one set of officers on the road after the consolidation, and shall be governed by the general internal improvement laws, with all the amendments thereto. (Acts Tenn., 1868-9, ch. 11, p. 93, sec. 25; passed December 9, 1868.)

**Comptroller of state authorized to settle with receiver.**

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee*, That the comptroller be, and is hereby, authorized and directed to settle with George G. Dibrell, as receiver and late president of the Southwestern Railroad Company.

SEC. 2. *Be it further enacted*, That when said settlement shall have been made, it may be made on the evidence of George G. Dibrell, or any other evidence proper and legal in itself. If there shall be any sum found to be due said receiver for a balance of salary, the comptroller shall issue his warrant for the same in favor of George G. Dibrell, said receiver, for

whatever amount shall be found to be due him on final settlement.

SEC. 3. *Be it further enacted*, That this act shall take effect from and after its passage, the public welfare requiring. (Acts Tenn., 1875, ch. 50, p. 47; passed March 10, 1875.)

**State aid to the Southwestern Railroad Company.**—Many acts of the legislature of the State of Tennessee were passed authorizing state aid to be granted to the Southwestern Railroad for the purpose of building and equipping its road. The state aid was given by having the governor to indorse the bonds of the road on behalf of the state. These acts are quite lengthy, and are so seldom required that, for the purpose of space and economy, it is not deemed advisable to insert them in full in this compilation, but simply to refer to the act and page where they can be found. Below will be found all acts relating to this subject set out in the order of their passage.

Acts 1851–52, ch. 151, sec. 10, governor authorized to issue coupon bonds for amount not exceeding \$8,000 a mile, on certain conditions. For conditions, see act.

Acts 1853–54, ch. 235, p. 478, governor authorized to issue bonds, to under certain conditions, which included the bridge across Collins river, Caney Fork, and Obed rivers.

Acts 1853–24, ch. 131, sec. 1, state aid to the extent of \$10 a mile. Under section 11 of this act the Southwestern Railroad Company was also granted two years to bring this within the provisions of an act entitled “An act to establish a system of internal improvements in this state.”

Acts 1857–58, ch. 118, p. 301, state aid granted.

Acts 1855–56, ch. 235, p. 478, sec. 2, state aid granted.

Acts 1859–60, ch. 78, p. 305, sec. 3, state aid granted.

Acts 1867–68, ch. 17, p. 14, sec. 4, state aid granted to extent of \$300,000.

Acts 1868–69, ch. 53, p. 264, sec. 32, state aid granted.

## CHAPTER XIII.

## THE BON AIR RAILWAY COMPANY.

(EXTENSION OF McMINNVILLE BRANCH.)

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—On December 3, 1887, the Bon Air Railway Company, pursuant to a resolution of its stockholders and directors, executed a deed to its railroad, roadbed, right of way, sidings, depots, grounds, franchises, properties, etc., to the Nashville, Chattanooga & St. Louis Railway. The consideration paid was the assumption and payment by the latter company of the cost of constructing said road, including right of way, etc. The deed to the same is recorded in the register's office of White county, in book vol. 31, p. 77. It is also inserted herein, in next chapter.

This purchase was legal. Under the Acts of Tennessee, 1871, ch. 69, which superseded the Acts of 1871, ch. 22, it was provided that "every railroad corporation in this state, whether created under a general or special law, shall have power to acquire, by purchase or other lawful contract, and have, hold, use, and operate, any railroad, with its franchises, belonging to any other railroad company.

**What franchises, etc., passed under this sale.**—In addition to the road and other property conveyed, the deed specifically transferred all the emoluments, *franchises*, *immunities*, and rights under the charter of said company, including the right to extend the road to the Kentucky state line, and to build branches thereof. For particular enumeration of franchises, see charter of said company, further on in this chapter.

**Width of right of way.**—This charter was granted under the general Acts of 1875, ch. 142. In it there is no clause vesting title to, or an easement over, any particular number of feet, in the absence of a written contract with the original land-owner, as is the case in most of the charters granted by *special* act. It will be noticed that, by section 9 of its charter, the



company was given power to condemn an *easement* in lands for a right of way not exceeding two hundred feet. Under this authority, therefore, the Bon Air Railway could have originally condemned any number of feet, up to and including the two hundred, for said purpose. Whatever number of feet it may have condemned, however, it will now be limited to that amount, and the Nashville, Chattanooga & St. Louis Railway, as the lawful purchaser thereof, will be entitled to no greater rights. If no condemnation proceedings were had at all, the entry and construction of the road would be regarded as an appropriation of the full amount of land authorized by the charter, which would be two hundred feet. (*Duck River Valley Narrow Gauge Railroad Co. v. Cochrane*, 3 Lea (Tenn.), 478; see, also, section 33 of the charter of the Bon Air Railway, further on in this chapter.)

1. For right of successive appropriations, and its application to charters granted under the general Acts of 1875, ch. 142, see *Eminent Domain, Right of Way*, herein; refer to index.

2. By Acts 1849-50, ch. 266, sec. 3, it was provided that all branches of the Nashville & Chattanooga Railroad as may be made, shall have all the rights and privileges, and shall be placed in all respects on the same footing, with the Nashville & Chattanooga Railroad Company. This act has never been construed by the supreme court, but, if a favorable construction was given, it would considerably enlarge the rights of the Nashville, Chattanooga & St. Louis Railway as to the right of way on this branch. A test case should be made.

**Distance built when purchased.**—The road from Sparta to Bon Air, a distance of six and one-half miles, had been constructed when purchased by the Nashville, Chattanooga & St. Louis Railway. The road has not as yet been built to the Kentucky line.

## ORIGINAL CHARTER OF THE BON AIR RAILWAY.

(Chartered under General Acts Tenn., 1875, ch. 142, sec. 6.)

**SECTION 1. Incorporation, name, route, general powers.**—*Be it known*, That W. C. Dibrell, J. W. Thomas, G. M. Fogg, J. H. Ambrose, and L. L. Losey are hereby constituted a body politic and corporate by the name and style of "The Bon Air Railway," for the purpose of constructing a railway from Sparta, in the county of White, to Bon Air coal fields, in said county, a distance of six miles and a half, and for the further purpose of extending said road northwardly and northeast-

wardly in the direction of the Cincinnati Southern Railroad, to the Kentucky state line, with full power to construct such branches along the route of the main stem to coal fields, ore banks, or such other points as the stock-<sup>May construct branches.</sup>holders of this company, or its successors, may determine to be for the interest of the company from time to time, and with full power to run and operate the same, and to equip and use it as a railroad and common carrier.

1. **Charter amended, may change termini.**—By Acts 1887, ch. 39, secs. 1, 2, all railroad companies chartered under the general laws of this state, may, by resolution of board of directors, change either terminus before the final location of the road. See act itself for method.

2. **By-laws for arbitration sustained.** 7 Pick. (Tenn.), 64.

3. By Acts 1889, ch. 158, all railroad companies chartered under the general laws of the state are allowed to build branch roads. See act itself for method.

**SEC. 2. General powers (continued).**—The general powers of said corporation are, to sue and be sued by the corporate name, to have and use a common seal, which it may alter at pleasure; if no common seal, then the signature of the name of the corporation by any duly authorized officer shall be legal and binding; to purchase and hold or receive by gift, in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment, or part payment, of any debt due to the corporation, and sell realty for corporation purposes; to establish by-laws and make all rules and regulations, not inconsistent with the laws and the constitution, deemed expedient for the management of corporate affairs; to appoint such subordinate officers and agents, in addition to the president and secretary, or treasurer, as the business of the corporation may require; to designate the name of the office and fix the compensation of the officer.

**SEC. 3. Special provisions.**—The following provisions and restrictions are coupled with said grant of powers: A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors.\* The term of all officers may be fixed by the by-laws of the corporation, the same not,

however, to exceed two years. The corporation may, by by-laws, make regulations concerning the subscription for or transfer of stock, fix upon the amount of capital to be invested in the enterprise, the division of the same into shares, the time required for payment thereof by the subscribers for stock, the amount to be called for at any one time; and in case of failure of any stockholder to pay the amount thus subscribed by him at the time and in the amounts thus called, a right of action shall exist in the corporation to sue said defaulting stockholder for the same.

\* See 3 Hum., 531; 12 Lea. 252; 4 Cold., 101.

**SEC. 4. Directors, quorum of, books.** — The board of directors, which may consist of five or more members, at the option of the corporation, to be elected either in person or by proxy, by a majority of the votes cast, each share representing one vote, shall keep a full and true record of all their proceedings, and an annual statement of receipts and disbursements shall be copied on the minutes, subject at all times to the inspection of any stockholder. The books of the corporation shall show the original or subsequent stockholders, their respective interests, the amount which has been paid on the shares subscribed, the transfer of stock, by and to whom made; also other transactions in which it is presumed a stockholder or creditor may have an interest.

**SEC. 5. Unpaid stock.** — The amount of any unpaid stock due from a subscriber to the corporation shall be a fund for the payment of any debts due from the corporation, nor shall the transfer of stock by any subscriber relieve him from payment, unless his transferee has paid up all or any of the balance due on said original subscription.

See 10 Pick. (Tenn.), 154, 608.

**SEC. 6. Express and implied powers.** — By no implication or construction shall the corporation be deemed to possess any powers except those hereby expressly given or necessarily implied from the nature of the business for which the charter is granted, and by no inference whatever shall said corporation



possess the power to discount notes or bills, deal in gold or silver coin, issue any evidence of debts as currency, buy and sell any agricultural products, deal in merchandise, or engage in any business outside the purpose of the charter.

**SEC. 7. Charter may be repealed or amended.**—The right is reserved to repeal, annul, or modify this charter. If it is repealed, or if the amendments proposed, being not merely auxiliary but fundamental, are rejected by a vote representing more than half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications, being fundamental, are accepted by the corporation as aforesaid, in a general meeting to be called for that purpose, any minor, married woman, or other person under disability, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much; if not, then so much as may be its real value in the market on the day of the withdrawal of said stockholders as aforesaid; *Provided*, That the claims of all creditors are to be paid in preference to said withdrawing stockholders.

The charter of the Nashville, Chattanooga & St. Louis Railway cannot be repealed or amended without the consent of the company. See section 34 of that charter.

**SEC. 8. Directors, quorum of; may borrow money, issue bonds, mortgages, etc.**—A majority of the board of directors shall constitute a quorum, and shall fill all vacancies until the next election. The first board of directors shall consist of the five or more corporators who shall apply for and obtain the charter. The said corporation may have the right to borrow money and issue notes or bonds upon the faith of the corporate property, and also to execute a mortgage or mortgages as further security for repayment of money thus borrowed.

**SEC. 9. Condemnation of right of way, two hundred feet.**—The said corporation shall have the right, in pursuance of the general law authorizing the condemnation of private property

for works of internal improvement, as set forth in §§ 1325–1348 in the code (both inclusive), to appropriate as an easement the right of way, not exceeding two hundred feet, over the land of any person through which the line of the track may be located. Said sections of the code are hereby literally copied and inserted in the words and figures following:

**SEC. 10 (1325). Land may be taken, how.**—Any person or corporation authorized by law to construct any railroad, turn-pike, canal, tollbridge, road, causeway, or other work of internal improvement to which the like privilege is conceded, may take the real estate of individuals not exceeding the amount prescribed by law, or by the charter under which the person or corporation acts, in the manner and upon the terms herein provided. (Iowa code, 1851, § 759.)

1. **Disability of owner does not affect the right.**—The right to take land under the power of eminent domain is not restricted by any disability of the owner, who is entitled to demand and receive the value of the property, but must show title. 3 Head (Tenn.). 63–65.

2. By Acts 1885, ch. 135, the operation of this and succeeding sections was extended so as to apply and include the condemnation and taking of the property, privileges, rights, or easements of private corporations. See act itself for method.

3. By Acts 1889, p. 447, as embodied in Shannon's Code, § 1879, it was made unlawful to construct or use any steam railway on any county road or highway, without the consent of the county court, to be granted in the method therein set out.

**SEC. 11 (1326). Proceedings, petition, etc.**—The party seeking to appropriate such lands shall file a petition in the circuit court of the county in which the land lies, setting forth, in substance, (1) the parcel of land a portion of which is wanted, and the extent wanted, (2) the name of the owner of such land, or if unknown, stating the fact, (3) the object for which the land is wanted, (4) a prayer that a suitable portion of land may be decreed to the petitioner and set apart by metes and bounds. (Iowa code, 1851, § 760.)

Petition need not be sworn to.

**SEC. 12 (1327). Notice to owner.**—Notice of this petition shall be given to the owner of the land, or, if a nonresident of the county, to his agent, at least five days before its presentation. (*Ib.*, modified.)

**SEC. 13 (1328). Where owner nonresident.**—If the owner is a nonresident of the state, or unknown, notice shall be given by publication as provided in this code in similar cases in chancery.

**SEC. 14 (1329). Proceedings only bind parties.**—All parties having any interest in any way in such land may be made defendants, and the proceedings will only cover and affect the interest of those who are actually made parties, unborn remainder-men being, however, bound by proceedings to which all living persons in interest are parties.

Tenants for life, years, and reversioners are interested parties, and must be compensated. 2 Head (Tenn.), 65, 176.

**SEC. 15 (1330). Writ of inquiry of damages.**—After the requisite notice has been given, if no sufficient cause to the contrary is shown, the court shall issue a writ of inquiry of damages to the sheriff, commanding him to summon a jury to inquire and assess the damages. (Iowa code, 1851, § 763.)

**SEC. 16 (1331). Clerk to issue writ, sheriff to summon jury.**—By consent of parties, or on application of the plaintiff, unless objection is made by the defendant, the writ of inquiry may be issued by the clerk as of course, after service of notice, on which the sheriff will summon the jury.

**SEC. 17 (1332). Jury to be disinterested.**—The jurors shall not be interested in the same, or a similar question, and shall possess the qualifications of other jurors, and may be nominated by the court, selected by consent of parties, or summoned by the sheriff.

**SEC. 18 (1333). Failure to attend.**—If named by the court, and the persons named are unable to attend when summoned, the place of such persons shall be supplied by the sheriff.

**SEC. 19 (1334). Number of jurors, challenges.**—The jury will consist of five persons, unless the parties agree upon a different number, and either party may challenge for cause, or peremptorily, as in other civil cases.

See 11 Heis., 56; 12 Heis., 56, 57.

**SEC. 20 (1335). Notice of taking inquest.**—The sheriff shall give the parties or their agents, if residents of the county, three



days' notice of the time and place of taking the inquest, unless the time has been fixed by the order of the court. (Iowa code, 1851, § 771.)

SEC. 21 (1336). **Jury to be sworn by sheriff.**—The jury, before proceeding to act, shall be sworn by the sheriff, fairly and impartially, without favor or affection, to lay off, by metes and bounds, the land required for the proposed improvement, and to inquire and assess the damages.

SEC. 22 (1337). **To examine ground and assess damages.**—The jury will then proceed to examine the ground and may hear testimony, but no argument of counsel, and set apart, by metes and bounds, a sufficient quantity of land for the purposes intended, and assess the damages occasioned to the owner thereby. (Iowa code, 1851, § 768.)

See 3 Lea, 482.

SEC. 23 (1338). **Damages, how estimated.**—In estimating the damages, the jury shall give the value of the land without deduction, but incidental benefits which may result to the owner by reason of the proposed improvement may be taken into consideration in estimating the incidental damages.

For full discussion of this. see *Eminent Domain*, herein. Refer to index.

SEC. 24 (1339). **Report returned in writing.**—The report of the jury shall be reduced to writing, signed by a majority of the jurors, delivered to the sheriff, and by him returned into court.

SEC. 25 (1340). **Confirmation of report.**—If no objection is made to the report, it is confirmed by the court, and the land decreed to the petitioner, upon payment to the defendants, or to the clerk for their use, of the damages assessed, with costs. (*Ib.*, § 775, modified.)

SEC. 26 (1341). **Exception to report and new writ.**—Either party may object to the report of the jury, and the same may, on good cause shown, be set aside and new writ of inquiry awarded. (Acts 1849–50, ch. 72, sec. 5.)

SEC. 27 (1342). **Appeal, new trial.**—Either party may also appeal from the finding of the jury, and on giving security for

the costs, have a trial anew before a jury in the usual way. (*Ib.*, modified.)

See 12 Heis. (Tenn.), 57.

**SEC. 28 (1343). Costs against appellant, when not.** — If the verdict of the jury upon the trial affirms the finding of the jury of inquest, or is more unfavorable to the appellant than the finding of such jury, the costs shall be adjudged against such appellant; otherwise the court may award costs as in chancery cases. (*Ib.*)

**SEC. 29 (1344). Appeal does not suspend work, how.** — The taking an appeal does not suspend the operations of the petitioner on the land, provided such petitioner will give bond with good security, to be approved by the clerk, in double the amount of the assessment of the jury of inquest, payable to the defendant, and conditioned to abide by and perform the final judgment in the premises.

**SEC. 30 (1345). Preliminary surveys, damages.** — A person or company actually intending to make application for the privileges herein contemplated, and entering upon the land of another for the purpose of making the requisite examinations and surveys, and doing no unnecessary injury, is liable only for the actual damage done; and, sued in such case, the plaintiff shall recover only as much costs as damages. (Iowa code, 1851, § 778.)

**SEC. 31 (1346). Damages to be prepaid, or bond on appeal.** — No person or company shall, however, enter upon such land for the purpose of actually occupying the right of way until the damages assessed by the jury of inquest and the cost have been actually paid; or, if an appeal has been taken, until the bond has been given to abide by the final judgment, as before provided.

See 6 Cold., 162; 7 Heis., 518, 535; 13 Lea, 671.

**SEC. 32 (1347). Owner may have inquest or sue for damages, when; proceedings.** — If, however, such person or company has actually taken possession of such land, occupying it for the purpose of internal improvement, the owner of such

land may petition for a jury of inquest, in which case the same proceedings may be had, as near as may be, as hereinbefore provided; or he may sue for damages in the ordinary way, in which case the jury shall lay off the land by metes and bounds and assess the damages, as upon the trial of an appeal from the return of a jury of inquest.

See 2 Head, 174, 65; 3 Lea, 480; 13 Lea, 670.

**SEC. 33 (1348). Limitation of proceedings by owner.**—The owners of land shall, in such cases, commence proceedings within twelve months after the land has been actually taken possession of and the work of proposed internal improvement begun; saving, however, to unknown owners and nonresidents twelve months after actual knowledge of such occupation, not exceeding three years; and saving to persons under disabilities of infancy, coverture, and unsoundness of mind twelve months after such disability is removed, but not exceeding ten years.

See 12 Heis., 623. See *Eminent Domain* herein. Refer to index.

**SEC. 34. Gauge, transportation charges, tracks not to obstruct roads, highways, streets, etc.**—The corporation is authorized to adopt such gauge as they may prefer. The charge for transportation shall not exceed twenty-five cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement for every hundred miles transported, and four cents per mile for every passenger, with power to make special contracts with shippers on their roads in regard to rate of freight so as not to exceed the amounts herein designated. The line of track of the road shall be so constructed so as not to interfere with convenient travel of the public along the highways, country roads, streets and alleys of cities, towns, and villages, and so as to allow carts, wagons, carriages, and other vehicles conveniently and safely to pass over or under the line of the track, and so as not to intercept traveling on foot or horseback, or in vehicles of any kind, from the necessary and proper use of the public roads, streets or alleys, in the usual and proper mode for their convenience.

By Acts 1885, ch. 20, all railroad companies in the state were authorized to select and alter the gauge of their road at pleasure.



**SEC. 35. Crossings, signboards.**—Boards, well supported by posts or otherwise, shall be placed, and constantly kept, across each public road; when the same is crossed on the same level by the track of the railway, the boards to be elevated so as not to obstruct travel, and on each side of said boards there shall be printed in large letters, easily to be seen by the traveler, the words “Railroad Crossing—Lookout for the Cars.” Said boards need not be put up at the crossing of streets and alleys in cities, towns, and villages, but such railroad company shall be subject to such proper regulations made by municipal authorities, in pursuance of general municipal powers regulating speed, passage, and flagman in such municipalities and at crossings; and when there are sidings and switches, the whistle shall always be blown at a distance of not less than two hundred and fifty yards from every crossing of a public road. When land on both sides of the track is owned by the same proprietor, convenient crossings shall be made and kept up at the expense of the corporation for the use of said proprietor, and all necessary cow-gaps made.

**SEC. 36. Regulations for running trains; fare must be paid.**—The board of directors shall fix the regular times for the running of trains for the transportation of passengers and property, and shall furnish sufficient accommodation for the safe, comfortable, and convenient transportation, and shall take, transport, and discharge such passengers and property at, from, and to such places on the due payment of freights, tolls, and fare legally authorized to be charged therefor, and in case of the refusal of said corporation, their officers or agents, to take and transport any passenger, or to deliver the same, or either of them, at the regular and appointed time, such corporation shall pay to the party aggrieved all damages thereby suffered, with costs of suit. If any passenger refuse to pay his toll or fare, the conductor may put him off the cars at any station or convenient point where said passenger can step on land.

**SEC. 37. Prohibited contracts; must receive freight from other roads.**—The corporation shall make no contract giving any person a preference in the speedy shipment of freights.

This corporation shall receive on their road full freighted cars from other roads, and transport them, without breaking bulk, to the place of destination, charging for the goods, wares, and merchandise therein no greater rate of freight than is charged for similar goods, wares, and merchandise in their own cars, and return said cars free of charge; *Provided*, The cars thus to be received are good and substantial; *And also provided*, The distance said wares and merchandise are to be transported is not less than twenty miles.

**SEC. 38. Officers and directors, capital stock, shares, books.**—The said five or more incorporators shall, within a convenient time after the registration of this charter in the office of the secretary of state, select from their number a president, secretary, and treasurer, or the last two offices may be combined into one, and shall not necessarily be stockholders, said president and the other incorporators to constitute the first board of directors. The board of directors may fix the amount of capital stock of the company and the number of shares into which the same may be divided, and under their direction subscription books may be opened to obtain stock, all other persons having an equal right with said original incorporators to subscribe for stock until the full amount of said capital stock is subscribed. When a sufficient amount of stock is subscribed, notice, personal or by advertisement in a newspaper where the principal office of the corporation is to be kept, is to be given of the time and place of an election of officers. The result of all elections is to be determined by a majority of the votes cast, each share to represent one vote.

**SEC. 39. Directors may increase capital.**—The board of directors may at any time increase the capital stock, if the necessities of the corporation, in their estimation, require said increase.

**SEC. 40. May enter upon private lands.**—The company, by its officers or agents, may enter upon the lands of private persons for the purpose of making surveys, estimates, and location of route.

**SEC. 41. Shares of stock personalty.**—The stock is to be impressed with the character of personal property.

We, the undersigned, apply to the State of Tennessee, by virtue of the law of the land, for a charter of incorporation for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, this twenty-first day of November, 1887.

W. C. DIBRELL,  
J. W. THOMAS,  
G. M. FOGG,  
J. H. AMBROSE,  
L. L. LOSEY.

The above charter was properly acknowledged and registered in the register's office of White county, in book 28, page 388, *et seq.*, and in the secretary of state's office, in book "S," page 5.

## CHAPTER XIV.

### DEED TO BON AIR RAILROAD, FRANCHISES, ETC.

BON AIR RAILROAD COMPANY,  
TO—*Deed.*  
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY. }

For and in consideration of the sum of five dollars to it in hand paid by the Nashville, Chattanooga & St. Louis Railway, and in consideration of the covenants and agreements hereinafter set out, to be done and performed by the Nashville, Chattanooga & St. Louis Railway, and in pursuance of resolutions adopted by the stockholders of the Bon Air Railway, authorizing the same and directing the directors of this company to make a sale and execute a conveyance of its properties, as hereinafter described, which resolutions are in the following words and figures, to wit:

*“Resolved by the stockholders of the Bon Air Railway in convention assembled, That the president be, and he is hereby, authorized, empowered, and directed to sell to the Nashville, Chattanooga & St. Louis Railway, all the property, rights,*



privileges, and franchises of the Bon Air Railway, in consideration of the Nashville, Chattanooga & St. Louis Railway agreeing to complete the railroad from Sparta to Bon Air, White county, Tennessee, and to pay the entire cost of the construction of the same; and he is further authorized, empowered, and directed to execute such instruments as may be necessary for the full conveyance of the railway aforesaid, its franchises, etc.”

And in further pursuance of resolutions of the directors directing the president of this company to execute these conveyances, the Bon Air Railway, a corporation chartered and organized under the laws of the State of Tennessee, has bargained and sold, and by these presents does transfer and convey, unto the said Nashville, Chattanooga & St. Louis Railway and its successors and assigns, all and singular its railroad, extending from Sparta, in White county, in a southeasterly direction, to Bon Air, in said county, being a standard gauge railroad six miles and a half in length, together with its roadbed, rights of way, sidings, depots, depot grounds, and all of its appurtenances, emoluments, franchises, immunities of every kind and nature whatsoever, together with all the rights under the charter to extend the road to the Kentucky line, and to build branches thereof, and in consideration of the Nashville, Chattanooga & St. Louis Railway having assumed and paid off the sum of ——— dollars, being the cost of construction of the said railroad and moneys expended for the right of way and otherwise upon said plant by the conveyor, and having paid off and discharged the same in full and relieved this conveyor of all liabilities therefor.

To have and to hold the said line of railway, roadbed, right of way, sidings, depots, depot grounds, franchises, immunities, etc., with all of its appurtenances, estate, title, and interest thereto belonging, to the said Nashville, Chattanooga & St. Louis Railway, its successors and assigns, forever.

And the said Bon Air Railway does covenant with the said Nashville, Chattanooga & St. Louis Railway that it is lawfully seized and possessed of said railroad and properties in fee simple, has a good right to convey it, and the same is unincum-

bered; and it does further covenant and bind itself and its successors to warrant and forever defend the title to said railroad and properties to the said Nashville, Chattanooga & St. Louis Railway, its successors and assigns, against the lawful claims of all persons whomsoever. In witness whereof, the said Bon Air Railway has caused its president and secretary to affix its corporate name and seal hereto, this the third day of December, 1887.

BON AIR RAILWAY,

L. L. LOSEY, *Sec.*

By J. H. AMBROSE, *President.*

This deed was properly acknowledged and registered in the register's office of White county, in book, vol. 31, pp. 77-79.

## CHAPTER XV.

## HUNTSVILLE &amp; ELORA RAILROAD COMPANY.

[HUNTSVILLE &amp; ELORA BRANCH.]

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—On October 28, 1887, the Huntsville & Elora Railroad Company, pursuant to a resolution of its stockholders and directors, executed a deed to its railroad, sidings, depots, right of way, franchises, etc., to the Nashville, Chattanooga & St. Louis Railway. At the date of sale, the road had not been constructed, and only partially graded. The consideration was an agreement on the part of the vendee company to complete and operate the road from Huntsville to Elora as a standard gauge, which was done. The deed to the same is recorded in the judge of probate court's office in Alabama, deed N. N. N., p. 581. It is also inserted herein in next chapter.

This sale was legal. Under sec. 24 of its charter, the Huntsville & Elora Railroad Company was given the power to sell its road, franchises, easements, immunities, etc., to any other corporation, whether chartered by the laws of Alabama or not. The Nashville, Chattanooga & St. Louis Railway had the right to make the purchase under Acts Tenn., 1871, ch. 69; Shannon's code, § 1509; M. & V., § 1250.

**What franchises, etc., passed under this sale.**—In addition to the road and other property conveyed, the deed specifically transferred all the easements, *franchises*, rights, privileges, and immunities contained in the charter of the Huntsville & Elora Railroad Company. For particular enumeration of these rights, franchises, etc., see charter further on in this chapter.

**Width of right of way.**—Section 16 of the charter of the Huntsville & Elora Railroad Company gives one hundred feet on each side of the center of said road as a right of way, in the absence of any contract with the original landowner to the contrary, where he fails to apply in time for assessment. This



section is the same as section 25 of the charter of the Nashville, Chattanooga & St. Louis Railway. See notes thereunder.

For discussion of this and kindred subjects, together with the right and method of taking more than one hundred feet on each side of the center of the road, when necessary for railroad purposes, see *Eminent Domain, Right of Way*, herein. Refer to index.

### **Where Huntsville & Elora Railroad Company incorporated.**

—The Huntsville & Elora Railroad Company was chartered by Acts Ala., 1886–87, No. 163, p. 289. It was never chartered in Tennessee. The road from the Alabama state line to Elora, Tennessee, was built under the original charter of the Winchester & Alabama Railroad Company. See p. 152, herein.

**Distance built when purchased.**—None of the road was built when purchased by the Nashville, Chattanooga & St. Louis Railway, though the right of way had been secured and the same mostly graded. The road from Huntsville, through the counties of Madison, Marshall, and Etowah, to Attalla and Gadsden, was authorized by Acts Ala., 1890–91, p. 154, approved December 10, 1890, though most of that extension was built under the charter of the Tennessee & Coosa Railroad after its purchase by the Nashville, Chattanooga & St. Louis Railway. See charter of Tennessee & Coosa Railroad Company. Refer to *index*.

## **ORIGINAL CHARTER OF THE HUNTSVILLE & ELORA RAILROAD COMPANY.**

(Acts Ala., 1886–7, No. 163, p. 289.)

**SECTION 1. Incorporation, name, general powers.**—*Be it enacted by the General Assembly of Alabama*, That for the purpose of building a railroad between Elora, Tenn., and Huntsville, Ala., the formation of a company is hereby authorized, which, when formed, shall be a body corporate, by the name and style of the Huntsville & Elora Railroad Company, and by said corporate name shall be capable in law to buy, receive by gift, hold, sell, and convey real and personal estate, as herein-after provided; make contracts, sue and be sued, make by-laws, and do all legal acts properly incident to a corporation necessary and proper to the transaction of the business for which it is in-

corporated, and to have and use a common seal, and the same to alter and destroy at pleasure, and shall have perpetual succession of members.

1. By Acts Ala., 1888-9, p. 443, the Nashville, Chattanooga & St. Louis Railway was granted all the rights, privileges, and immunities, and subjected to all restrictions, as were granted by the act incorporating the same, as far as this road lies within the county of Madison. See act itself in next chapter.

2. For rights, privileges, etc., of Nashville, Chattanooga & St. Louis Railway see ch. 1, herein.

**SEC. 2. Capital, books opened, commissioners.**—That the capital stock of this company may be fixed by its shareholders at any sum not to exceed “two hundred and fifty thousand dollars,” and that Oscar R. Hundley, Lawrence Cooper, Benj. P. Hunt, M. J. O’Shaughnessy, John W. Thomas, G. M. Fogg, Milton Humes, and Robert L. Pulley, be, and they are hereby, appointed commissioners to open books for the subscription to the stock of the company, at Huntsville, Ala., and that said commissioners, or any three thereof, shall receive subscriptions for the stock of said company, on and from the passage of this act, to the first day of January, 1888, or until five thousand dollars shall have been subscribed.

**SEC. 3. Money deposited ; incorporation, directors, powers of.**—As soon as said sum of five thousand dollars shall have been subscribed, the said commissioners shall place the money so received by them in such bank at Huntsville, Alabama, to the credit of the company hereby incorporated, subject to the order of the president and directors of said company. The said Oscar R. Hundley, Lawrence Cooper, Benj. P. Hunt, M. J. O’Shaughnessy, John W. Thomas, G. M. Fogg, Milton Humes, and Robert L. Pulley shall be, and are hereby, constituted a board of directors of said company for the first twelve months after the passage of this act, and until a meeting of the stockholders of said company shall be had as hereinafter provided; and that the subscribers to said stock, and said board of directors, shall form a body politic and corporate in deed and in law and by the name and for the purpose aforesaid, and in all things to be represented by the board of directors aforesaid until the election of a board as

Board of  
directors.

hereinafter prescribed; and they shall have the power to elect the president and officers of said company, and enact such rules, regulations, and by-laws which may be necessary for the government thereof and the transaction of its business.

See notes to sec. 8 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 4. Board of directors, president.**—The affairs of said company shall be managed by the board of directors, consisting of seven, who shall be chosen by the stockholders from their own body, and a president of the company shall be elected by the directors from among their own members, in such manner as the regulations of the corporation shall prescribe.

**SEC. 5. Directors to hold over; elections.**—Should the day of annual election pass away without any election of directors, the corporation shall not thereby be dissolved, but it shall be lawful on any other day to hold and make such election, in such manner as may be prescribed by a by-law of the corporation.

The directors of the entire system of which this road now forms a part, are elected under the charter of the Nashville, Chattanooga & St. Louis Railway. See ch. 1, herein.

**SEC. 6. Vacancies in board, how filled; president pro tempore**—The board of directors may fill up all vacancies which may occur in it during the period for which their board shall have been elected; and in the absence of the president, may fill his place by electing a president *pro tempore*.

See sec. 10 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 7. Contracts binding without seal.**—All contracts and agreements authenticated by the president of the board shall be binding on the company without seal, or in such other mode of authentication may be used as the company, by their by-laws, may adopt.

See notes to sec. 11 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 8. Exclusive transportation; rate of charge.**—The company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, and produce over the said railroad by them constructed; *Provided*, That the



charge of transportation or conveyance shall not exceed thirty-five cents per one hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement for every one hundred miles, and five cents per mile for every passenger; *And provided also*, That the said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned.

See notes to sec. 14 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 9. Stock, how transferred.**—The stock of said company may be transferred in such manner and form as may be directed by the by-laws of the said corporation.

See notes to sec. 16 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 10. Capital increased, how.**—The said company may at any time increase its capital to a sum sufficient to complete the said road and to stock it with everything necessary to give it full operation and effect, either by opening books for new stock or by selling such new stock, or by borrowing money on the credit of the company, and on the mortgage of its charter and works; and the manner in which the same shall be done in either case shall be prescribed by the stockholders at a general meeting; and any state, or any citizen, corporation, or company of this or any other state or country, may subscribe for and hold stock in said company, with all the rights and subject to all the liabilities of any other stockholder.

See notes to sec. 17 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1 herein.

**SEC. 11. Directors' annual report; may call general meetings.**—The board of directors shall, in every year at least, make a full report of the state of the company and its affairs to a general meeting of the stockholders, and oftener, if directed by a by-law, and shall have power to call a general meeting of the stockholders when the board may deem it expedient.

See notes to secs. 18 and 9 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 12. Method and scale of voting; value of shares.**—The stockholders may vote in person or by proxy, and in the

election of directors, and on voting on all questions which come before the meeting of the stockholders, or which may be submitted to the decision of the stockholders in any other manner, each stockholder shall have the right to cast one vote for each share of stock held by him. Shares of stock shall be one hundred dollars each.

See notes to sec. 20 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 13. Real property may be purchased, for what.**—The said company may purchase, have, and hold in fee, or for a term of years, any lands, tenements, hereditaments which may be necessary for said road or appurtenances thereof, or for the erection of depositories, storehouses, houses for the officers, servants, or agents for the company, or for workshops or foundries to be used for the said company, or for producing timber, stone or other material necessary for the construction of the road or its appurtenances, or for effecting transportation thereon.

See notes to sec. 21 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 14. Crossing roads and water courses.**—The said company shall have the right, when necessary, to construct the road, or any branch thereof, across or along any public road or water course; *Provided*, That the said road and the navigation of such water course shall not be thereby obstructed.

See notes to sec. 22 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 15. Condemnation for right of way.**—When any land or right of way may be required by the said company for the purpose of constructing their road, and, for want of agreement as to the value thereof, or for any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commissioners, or a majority of them, to be appointed by the probate court of the county where some part of the land or right of way is situated, and the said commissioners, before they act, shall severally take an oath before some justice of the peace faithfully and im-

partially to discharge the duty assigned to them. In making the said valuation the commissioners shall take into consideration the loss or damage which may occur to the owner or owners in consequence of the land being taken or the right of way surrendered, and also the benefit and advantage he, she, or they may receive from the erection or establishment of the railroad or works, and shall state particularly the nature and amount of each, and the excess of loss and damage over and above the benefit and advantage shall form the measure of valuation of the said land or right of way. The proceedings of the said commissioners, accompanied with a full description of the said land or right of way, shall be returned under the hands and seals of a majority of the commissioners to the court from which the commission issued, there to remain on record. In case either party to the proceedings shall appeal

**Appeals.** from the valuation to the next session of the court granting the commission and give reasonable notice to the opposite party of such appeal, the court shall order a new valuation to be made by a jury, who shall be charged therewith in the same term, or as soon as practicable, and their verdict shall be final and conclusive between the parties, unless a new trial shall be granted, and the land or right of way so valued by the commissioners or jury shall vest in the said company in fee simple so soon as the valuation may be paid, or, when refused, may be tendered. When there may be an appeal as aforesaid from the valuation of commissioners by either of the parties, the same shall not prevent the works intended to be constructed from proceeding, but when the appeal is by the company requiring the surrender, they shall be at liberty

**Appeal bonds.** to proceed in their works only on condition, by giving to the opposite party a bond, with good security, to be approved by the clerk of the court, when the valuation is returned in a penalty equal to double the said valuation, conditioned for the payment of said valuation and interest, in case the same be sustained, and, in case it be reversed, for the payment of the valuation thereafter to be made by the jury and confirmed by the court; *Provided*, That when



the land cannot be had by gift or purchase, the operations of the work are not to be hindered or delayed during the pendency of any proceedings to assess its value as aforesaid, nor shall any injunction or supersedeas be awarded by any judge or court to delay the progress of said work.

For full discussion of this section, see notes to section 24 of the charter of Nashville, Chattanooga & St. Louis Railway, chapter 1, herein.

**SEC. 16. In absence of contract, right of way one hundred feet, when.**—

In the absence of any contract with the said company in relation to land through which the said road may pass, signed by the owner thereof, or by his agent, or claimant or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with a space of one hundred feet on each side of the center of said road, has been granted to the company by the owner thereof, and the company shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used only for the purposes of the road, and no longer, unless the person or persons owning the said land at the time that part of the road which may be on said land was finished, or those claiming under him, her, or them, shall apply for an assessment for the valuation of said lands, as hereinbefore directed, within five years next after that part of said road was finished. And, in case the said owner or owners, or those claiming under him, her, or them, shall not apply for such assessment within five years When claims are barred. next after the said part was finished, he, she, or they shall be forever barred from recovering the said land or having any assessment or compensation therefor, provided nothing herein contained shall affect the right of *femes covert* or infants until two years after the removal of their respective disabilities.

See notes to sec. 25 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 17. Obstructing or damaging road, bridge, or vehicle; punishment.**—If any person shall willfully and maliciously destroy, or in any manner hurt, damage, or obstruct the said

railroad, or any bridge, or any vehicle used for or in the transportation thereon, such person or persons so offending shall be liable to be indicted therefor, and, on conviction, shall be imprisoned not more than six months nor less than one month, and pay a fine of not less than twenty dollars, and shall be further liable to pay all the expenses of repairing the same; and it shall not be competent for any person so offending against the provisions of this clause to defend himself by pleading or giving in evidence that he was the owner, or agent or servant of the owner, of the land when such destruction, hurt, damage, injury, or obstruction was done, at the time the same was caused or done.

See notes to sec. 27 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 18. Obstruction a public nuisance.**—Every obstruction to the safe and free passage of vehicles on the said road shall be deemed a public nuisance, and may be abated as such by an officer, agent, or servant of the company, and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

See notes to sec. 28 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 19. Storage charges allowed, when.**—The said company shall have the right to take at the storehouses they may establish or annex to their railroad, all goods, wares, merchandise, and produce intended for transportation, prescribe the rules, priority, and charge and receive such just and reasonable compensation for storage as they, by rules, may establish (which they shall cause to be published), or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation: *Provided*, That the said company shall not charge or receive storage on goods, wares, merchandise, or produce which may be delivered to them at their regular depositories for immediate transportation, and which the company may have the power of transporting immediately.

See notes to sec. 29 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 20. Crossings of roads and lands.**—Whenever, in the construction of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way so as not to impede the passage or transportation of persons or property along the same, or when it shall be necessary to pass through the land of any individual, it shall be their duty to provide for such individual a proper wagon way or ways across said road from one part of his land to the other.

See notes to sec. 32 of charter of Nashville, Chattanooga & St. Louis Railway, ch. -1, herein.

**SEC. 21. Additional powers.**—The said company shall possess such additional powers as may be convenient for the due and successful execution of the powers granted in this charter, and for the successful construction and management of the work.

See notes to sec. 33 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 22. Charter, how amended.**—This charter shall be amendable, from time to time, by the legislature, whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments; and when such amendments shall be adopted by the legislature, and submitted to the directory, and be accepted and adopted unanimously by the president and directors, they shall be obligatory on the stockholders, and not otherwise.

See notes to sec. 34 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**SEC. 23. Road to commence and be completed, when.**—The railroad authorized by this act shall be commenced within six months after the passage of this act, and shall be finished within two years thereafter; otherwise the charter hereby granted shall be void.

**SEC. 24. May dispose of road, franchises, etc.**—*Be it further enacted,* That said company may sell, alien, and convey, lease or farm out their rights of transportation to said road, their franchise, roadbed, railway, depots, rolling stock, and all rights, easements, and immunities, to any other corporation,



whether resident or nonresident, whether incorporated by the laws of Alabama or those of any other state, upon a majority of the stockholders, at a meeting to be called by the directors of said company, upon five days' notice, authorizing the same to be done, and upon such authorization the president and directors shall have the power to make such sale, lease, or assignment, and execute proper conveyances therefor; and the purchaser shall be entitled to all the rights, franchises, and immunities of the corporation hereby incorporated under this act. (Acts Ala., 1886-7, No. 163, p. 289; passed February 8, 1887.)

## CHAPTER XVI.

### DEED TO AND ACTS RELATING TO HUNTSVILLE & ELORA RAILROAD.

HUNTSVILLE & ELORA RAILROAD CO.

TO—*Deed.*

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY. }

This indenture, made and entered into this twenty-eighth day of October, A.D. 1887, by and between the Huntsville & Elora Railroad Company, a corporation chartered and doing business under the laws of the State of Alabama, of the first part, and the Nashville, Chattanooga & St. Louis Railway, a corporation chartered and doing business under the laws of the State of Tennessee, of the second part, witnesseth that, for and in consideration of the covenants and agreements hereinafter set out, to be done and performed by the party of the second part, the said party of the first part does hereby bargain, sell, alien, and convey unto the party of the second part, its successors and assigns, all of its lines of railway, sidings, stations, depots, depot grounds, rights of way, real estate, roadbed, and all of its emoluments, easements, franchises, and all rights, privileges, and immunities held, owned, or obtained by it under its charter granted by the gen-

Rights, franchises, etc., pass.

eral assembly of the State of Alabama, on the eighth day of February, 1887, its said lines of railway being described as follows, to wit: Beginning at the city of Huntsville, in Madison county, State of Alabama, and running northeasterly through the villages of Belle Factory, New Market, and Plevna, in said county and state, to the village of Elora, a station on the Winchester and Alabama branch of the Nashville, Chattanooga & St. Louis Railway, in the county of Lincoln, State of Tennessee, being a distance of twenty-six and a half miles, more or less, with an average right of way of one hundred feet, more or less. The said road has only been partially graded between Huntsville and Elora.

To have and to hold unto the said Nashville, Chattanooga & St. Louis Railway, its successors and assigns, forever, all the above described property, together with the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining as above described and set forth.

And the said party of the first part, in consideration of the premises, hereby covenants that it is seized and possessed of said properties, and has a full right to convey the same, and that the title to the same is free and unincumbered, except as hereinafter set out, and it will forever warrant and defend the title hereby conveyed from the legal claims of all persons whatsoever.

It is understood, however, that certain rights of way herein conveyed were made directly to the party of the second part by the consent of both parties heretofore, and it is not intended hereby to warrant these titles; and the party of the second part, in consideration of the premises, has paid the party of the first part one dollar, the receipt whereof is hereby acknowledged by said party of the first part, and in further consideration hereby covenants to and with the party of the first part to at once complete the construction of said lines of railway from Huntsville to Elora, as above described, making it a standard gauge road of the same gauge of said party's main line, and to complete and equip the same as a railway, and to operate the same by running freight and pas-

Consideration.

senger trains thereon, and to run at least one through passenger coach daily between Nashville and Huntsville, and without unavoidable delay.

In witness whereof the said parties have caused their proper officers to affix their corporate names and seals hereto, the day and date first above mentioned.

THE HUNTSVILLE & ELORA RAILROAD COMPANY,  
OSCAR R. HUNDLEY, *Sec.* By G. M. FOGG, *President.*

The above deed was properly acknowledged and registered in the office of the judge of probate court of Madison county, Alabama, deed N N N, p. 581.

### **Rights and privileges granted Huntsville & Elora Railroad through Madison County, Alabama.**

SECTION 1. That the Nashville & Chattanooga Railroad Company be, and they are hereby, authorized to construct their road through the northern portion of Jackson county, in this state, and that they shall have and enjoy all the rights, privileges, and immunities, and be subject to such restrictions, as are granted to and imposed upon said company by the act incorporating the same, as far as said railroad lies in the county of Jackson, on the express condition, however, that any railroad company now chartered or which may hereafter be chartered in this state, shall have the right to connect their road directly with the said Nashville & Chattanooga Railroad at any point on it in the county of Jackson aforesaid.

The above section is set out, as it is referred to in the fourth section, which relates to the Huntsville & Elora Railroad. Sections 2 and 3 of this act have no bearing, and hence are omitted.

SEC. 4. Whereas, the Nashville, Chattanooga & St. Louis Railway, formerly the Nashville & Chattanooga Railroad Company, has constructed a road from Elora, in the State of Tennessee, to Huntsville, in the county of Madison, State of Alabama; *Therefore be it further enacted by the General Assembly,* That said Nashville, Chattanooga & St. Louis Railway shall have and enjoy all the rights, privileges, and immunities granted in section one of this act, so far as said Nashville, Chattanooga & St. Louis Railway lies within the county of Madison. (Acts Ala., 1888-89, p. 443; approved February 19, 1889.)



## CHAPTER XVII.

*THE NASHVILLE & TUSCALOOSA RAILROAD COMPANY.*

(CENTREVILLE BRANCH.)

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—On July 29, 1880, a contract was entered into between the Nashville, Chattanooga & St. Louis Railway and the Nashville & Tuscaloosa Railroad Company, by the terms of which the former company agreed to extend the road of the latter company from Graham station to a point on the north bank of Duck river, opposite Centreville, Tenn., a distance of about thirteen miles. The road from Dickson to Graham station had already been constructed. In consideration, the Nashville & Tuscaloosa Railroad Company agreed to convey to the Nashville, Chattanooga & St. Louis Railway, in fee simple, all of its railroad from Dickson, Tenn., to Centreville, Tenn., together with all its charter rights, privileges, franchises, equipments, appurtenances, etc. The road was to be constructed as a narrow gauge railroad.

Under and by virtue of this contract, the Nashville, Chattanooga & St. Louis Railway built the road as provided therein, and, on March 13, 1883, the Nashville & Tuscaloosa Railroad Company conveyed to it, in conformity with the agreement above set out, all of its railroad, beginning at the junction of said road with the Nashville, Chattanooga & St. Louis Railway, and extending in a line to Centreville, in Hickman county, Tenn., a distance of about thirty-four miles of completed road, together with all and singular the appurtenances, rights, franchises, etc., thereof, a deed to which was duly acknowledged and registered in the register's office of Hickman county, in trust deed book No. 2, pp. 552-554. Said deed is also inserted herein. See next chapter.

Under and by virtue of the same contract, the Nashville, Chattanooga & St. Louis Railway subsequently extended the said road from Centreville to a point on the line separating Lewis county from Hickman county, a distance of about thirteen miles, and, on June 20, 1884, the Nashville & Tuscaloosa Railroad Company, in pursuance of said agreement, deeded to the Nashville, Chattanooga & St. Louis Railway that part of the road from Centreville to a point on the line separating Lewis county from Hickman county, a distance of about thirteen miles, as above explained, together with all the rights, franchises, privileges, appurtenances, etc., appertaining thereto, a deed to which was duly acknowledged and registered in the register's office of Hickman county, in trust deed book No. 3, pp. 60-62. Said deed is also inserted herein. See next chapter.

1. This last conveyance reached a point about a mile from Kimmins, in Lewis county.

2. **Road from Kimmins to Minnie, on Allen's creek.**—The road from Kimmins, in Lewis county, to Minnie, on Allen's creek, in Wayne county, a distance of eighteen miles, was built by the Southern Iron Company, and sold to the Nashville, Chattanooga & St. Louis Railway on the twenty-fourth day of September, 1892, a deed to which is registered in the register's office of Lewis county, in book I, p. 495; in Wayne county, in book T, p. 50. Said deed is also inserted herein in next chapter.

3. **Road from Centreville to Swan creek, in direction of Duck river phosphate mines.**—The road from Centreville to Swan creek, in the direction of the Duck river phosphate mines, was built by the Nashville, Chattanooga & St. Louis Railway, so as to connect at Swan creek with the road built by the said phosphate company from their mines to said point. This extension was made under Acts 1895, ch. 152, p. 314, allowing lateral roads to be built to mines, quarries, etc., if not exceeding eight miles. The rails, etc., on the road built by the Duck River Phosphate Company from their mines to Swan creek are owned by the Nashville, Chattanooga & St. Louis Railway.

4. **Gauge changed, when.**—When the above purchased roads were secured they were narrow gauge. The Nashville, Chattanooga & St. Louis Railway subsequently changed them to broad gauge in June, 1894.

5. **Legality of purchase.**—The purchase of the above roads was legal under the acts of Tennessee, 1871, ch. 69, which superseded the acts of 1871, ch. 22.

6. **Road from Lyles to Warner.**—The road from Lyles to Warner is not owned by the Nashville, Chattanooga & St. Louis Railway, though the rails, etc., on said road are owned by the Nashville, Chattanooga & St. Louis Railway.

**What franchises, etc., passed under this sale.**—In addition to the railroad, appurtenances, equipments, lands, depots,

bridges, etc., therein conveyed, the deeds specifically transferred and conveyed all the rights, privileges, and franchises contained in the charter of the said Nashville & Tuscaloosa Railroad Company. For the enumeration of said franchises, rights, etc., see charter of Nashville & Tuscaloosa Railroad Company further on in this chapter, and the deed from the Southern Iron Company to the Nashville, Chattanooga & St. Louis Railway, of that part of the road from Kimmins to Minnie, which deed is set out in the succeeding chapter.

**Width of right of way.**—The charter of the Nashville & Tuscaloosa Railroad Company was granted under the general acts of the legislature of the State of Tennessee, as set out in Acts of 1875, ch. 142, sec. 6. In this charter there is no clause granting any specified number of feet as a right of way, in the absence of any contract with the original landowner, as is provided in most of the charters granted by *special acts*. Sec. 9 of the charter provides, however, that the said company shall have the right to appropriate, as an easement, a right of way not exceeding two hundred feet, one hundred feet on each side of the center line of said road, over the land of any person through which the line of track may be located. Under this section, the Nashville & Tuscaloosa Railroad Company could have originally condemned any number of feet, up to and including two hundred, for a right of way. Whatever number of feet was originally condemned, however, would now be binding upon the Nashville, Chattanooga & St. Louis Railway. Should no condemnation have been had at all, then the entry and construction of the road would be regarded as an *appropriation* of so much of the land as the law authorized, which is two hundred feet, and the Nashville, Chattanooga & St. Louis Railway, as the lawful purchaser thereof, would be entitled to that number of feet. 3 Lea (Tenn.), 478. On that part of the road from Kimmins to Minnie, which was conveyed to the Nashville, Chattanooga & St. Louis Railway by the Southern Iron Company, the right of way is fifty feet on each side of the center of the road, as will appear from said deed, and which deed is set out in the next chapter.



1. It is probable that the statute of limitations would run against the railway on this line of road, under the charter of the Nashville & Tuscaloosa Railroad Company, if adjoining landowner is allowed to use and occupy adversely a part of the two hundred feet. The same is doubtless true of that part of the road conveyed by the Southern Iron Company.

2. In considering this question, however, regard must be had to the Acts of Tenn., 1849-50, ch. 266, sec. 3, which provided that all branches of the Nashville & Chattanooga Railroad Company, as may be made, shall have all the rights and privileges and be placed in all respects on the same footing, as the Nashville & Chattanooga Railroad Company.

3. For full discussion of this subject, together with right of taking more than two hundred feet, see *Eminent Domain*, herein. Refer to index.

## ORIGINAL CHARTER OF NASHVILLE & TUSCALOOSA RAILROAD COMPANY.

(Chartered under General Acts 1875, ch. 142.)

**SECTION 1. Incorporation, name, route, general powers.**—*Be it known*, That E. F. Falconnet, L. S. Goodrich, G. H. Nixon, J. H. Moore, W. B. Russell are hereby constituted a body politic and corporate by the name and style of the “Nashville & Tuscaloosa Railroad Company,” for the purpose of constructing a railroad from a point on the Nashville & Northwestern Railway at or near Burns Station, or at or near any other convenient station or point on said railway, through the town of Centreville, Hickman county, and through the town of Lawrenceburg, Lawrence county, to a point on the northern boundary of the State of Alabama in the direction of Florence, North Alabama.

1. **Charter amended, may change termini.**—By Acts Tenn., 1887, ch. 39, secs. 1, 2, all railroad companies chartered under the general laws were authorized to change either terminus before final completion. See act itself for method.

2. By Acts 1889, ch. 158, all railroad companies chartered under the general laws were allowed to build branch roads. See act itself for method.

3. By Acts 1879, ch. 156, p. 199, it was provided that the state revenue collected and to be collected in Hickman county for the years 1878 and 1879 should be remitted in order that the people could complete this road to Centreville.

4. The charter of this company was amended, as will appear from the secretary of state's office, so as to enable the company to increase its capital.

**SEC. 2. General powers (continued).**—The general powers of this corporation are, to sue and be sued by the corporate

name, to have and use a common seal, which it may alter at pleasure; if no common seal is used, then the signature of the name of the corporation, by any duly authorized officer, shall be legal and binding; to purchase and to hold or receive by gift, in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase and accept any real estate in payment, or part payment, of any debt due to the corporation, and sell realty for corporation purposes; to establish by-laws and make all rules and regulations not inconsistent with the laws and the constitution deemed expedient for the management of corporate affairs; to appoint such subordinate officers and agents, in addition to president and secretary and treasurer, as the business of the corporation may require, designate the name of the office and fix the compensation of the officers.

**SEC. 3. Special provisions.**—A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors. The term of all officers may be fixed by the by-laws of the corporation, the same not to extend beyond two years. This corporation may, by by-laws, make regulations concerning subscription for or transfer of stock, fix upon the amount of capital to be invested in the enterprise, the division of the same into shares, the time required for payment thereof by the subscribers for stock, the amount to be called for at any one time, and, in the amounts thus called, a right of action shall exist in the corporation to sue any defaulting stockholder for the same.

**SEC. 4. Directors, quorum, books.**—The board of directors of the Nashville & Tuscaloosa Railroad Company shall consist of five members, to be elected either in person or by proxy, by a majority of the votes cast, each share of stock representing one vote; shall keep a full and true record of all their proceedings, and an annual statement of all receipts and disbursements shall be copied on the minutes, subject, at all times, to the inspection of any stockholder. The books of the Nashville

& Tuscaloosa Railroad Company shall show the original and subsequent stockholders, their respective interests, the amount which has been paid on the shares subscribed, the transfer of stock, by and to whom made; also other transactions in which it is presumed a stockholder or creditor may have an interest.

**SEC. 5. Unpaid stock.**—The amount of any unpaid stock due from a subscriber to the corporation shall be a fund for the payment of any debts due from the corporation, nor shall the transfer of stock of any particular stockholder or subscriber relieve him from payment, unless his transferee has paid up all or any of the balance due on said original subscription.

**SEC. 6. Express and implied powers.**—By no implication or construction shall the Nashville & Tuscaloosa Railroad Company be deemed to possess any powers except those hereby expressly given or necessarily implied from the nature of the business for which the charter is granted, and by no inference whatever shall this corporation possess the power to discount notes or bills, deal in gold or silver coin, to issue any evidence of indebtedness as currency, buy and sell any agricultural products, deal in merchandise, or engage in any business outside of the purpose of this charter.

**SEC. 7. Charter may be repealed or amended.**—The right is reserved to repeal, annul, or modify this charter. If it is repealed, or if the amendments proposed, being not merely auxiliary, but fundamental, are rejected by a vote representing more than half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications, being fundamental, are accepted by the corporation as aforesaid, in a general meeting to be called for that purpose, any minor or married woman, or other person under disability, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much; if not, then so much as may be its real value in the market on the day of the withdrawal of



said stockholders as aforesaid; *Provided*, That the claims of all creditors are to be paid in preference to said withdrawing stockholders.

**SEC. 8. Directors, quorum of, may borrow money, issue bonds, mortgages, etc.**—A majority of the board of directors of the Nashville & Tuscaloosa Railroad Company shall constitute a quorum, and shall fill all vacancies until the next election. The first board of directors of this company shall consist of the five original corporators who have applied for this charter. The Nashville & Tuscaloosa Railroad Company shall have the right to borrow money and issue notes or bonds upon the faith of the corporate property, and also to execute a mortgage or mortgages as further security for the payment of money thus borrowed.

**SEC. 9. Condemnation of right of way two hundred feet.**—The said Nashville & Tuscaloosa Railroad Company shall have the right, in pursuance of the general law authorizing the condemnation of private property for works of internal improvement, as set forth in §§ 1325–1348 in the code (both inclusive), to appropriate, as an easement, the right of way, not exceeding two hundred feet, one hundred feet on each side of the center line of said road, over the land of any person through which the line of the track may be located. The sections of the code, 1325–1348, read as follows:

**SEC. 10 (1325). Land may be taken, how.**—Any person or corporation authorized by law to construct any railroad, turnpike, canal, tollbridge, road, causeway, or other work of internal improvement to which the like privilege is conceded, may take the real estate of individuals not exceeding the amount prescribed by law, or by the charter under which the person or corporation acts, in the manner and upon the terms herein provided. (Iowa code, 1851, § 759.)

1. The right to take land under the power of eminent domain is not restricted by any disability of the owner, who is entitled to demand and receive the value of the property, but must show title. 3 Head (Tenn.), 63–65.

2. By Acts Tenn., 1885, ch. 135, the operation of this and succeeding sections was extended so as to apply and include the condemnation and taking of the property, privileges, rights, and easements of private corporations.

3. By Acts 1889, p. 447 (Shannon's code, § 1879), it was made unlawful to construct or use any steam railway on any county road or highway without the consent of county court, to be granted in the method therein set out.

**SEC. 11 (1326). Proceedings, petition, etc.**—The party seeking to appropriate such lands shall file a petition in the circuit court of the county in which the land lies, setting forth in substance (1) the parcel of land a portion of which is wanted, and the extent wanted, (2) the name of the owner of such land, or, if unknown, stating the fact, (3) the object for which the land is wanted, (4) a prayer that a suitable portion of land may be decreed to the petitioner and set apart by metes and bounds. (Iowa code, 1851, § 760.)

Petition need not be sworn to.

**SEC. 12 (1327). Notice to owner.**—Notice of this petition shall be given to the owner of the land, or, if a nonresident of the county, to his agent, at least five days before its presentation.

**SEC. 13 (1328). Where owner nonresident.**—If the owner is a nonresident of the state, or unknown, notice shall be given by publication as provided in this code in similar cases in chancery.

**SEC. 14 (1329). Proceedings only bind parties.**—All parties having any interest in any way in such land may be made defendants, and the proceedings will only cover and affect the interest of those who are actually made parties, unborn remaindermen being, however, bound by proceedings to which all living persons in interest are parties.

Tenants for life, years, and reversioners are interested parties, and must be compensated. 2 Head, 65, 176.

**SEC. 15 (1330). Writ of inquiry of damages.**—After the requisite notice has been given, if no sufficient cause to the contrary is shown, the court shall issue a writ of inquiry of damages to the sheriff, commanding him to summon a jury to inquire and assess the damages. (Iowa code, 1851, § 763.)

**SEC. 16 (1331). Clerk to issue writ, sheriff to summon jury.**—By consent of parties, or on application of the plaintiff,

unless objection is made by the defendant, the writ of inquiry may be issued by the clerk of the court, after service of notice, on which the sheriff will summon the jury.

**SEC. 17 (1332). Jury to be disinterested.** — The jurors shall not be interested in the same, or a similar question, and shall possess the qualifications of other jurors, and may be nominated by the court, selected by consent of parties, or summoned by the sheriff.

**SEC. 18 (1333). Failure to attend.** — If named by the court, and the persons named are unable to attend when summoned, the place of such persons shall be supplied by the sheriff.

**SEC. 19 (1334). Number of jurors, challenges.** — The jury will consist of five persons, unless the parties agree upon a different number; and either party may challenge for cause, or peremptorily, as in other civil cases.

See 11 Heis., 56; 12 Heis., 56, 57.

**SEC. 20 (1335). Notice of taking inquest.** — The sheriff shall give the parties or their agents, if residents of the county, three days' notice of the time and place of taking the inquest, unless the time has been fixed by the order of the court. (Iowa code, 1851, § 771.)

**SEC. 21 (1336). Jury to be sworn by sheriff.** — The jury, before proceeding to act, shall be sworn by the sheriff, fairly and impartially, without favor or affection, to lay off by metes and bounds the land required for the proposed improvement, and to inquire and assess the damages.

**SEC. 22 (1337). Examine ground and assess damages.** — The jury will then proceed to examine the ground and may hear testimony, but no argument of counsel, and set apart by metes and bounds a sufficient quantity of land for the purposes intended, and assess the damages occasioned to the owner thereby. (Iowa code, 1851, § 768.)

See 3 Lea, 482.

**SEC. 23 (1338). Damages, how estimated.** — In estimating the damages, the jury shall give the value of the land without deduction, but incidental benefits which may result to the owner



by reason of the proposed improvement may be taken into consideration in estimating the incidental damages.

For full discussion of this, see *Eminent Domain*, herein. Refer to index.

SEC. 24 (1339). **Report returned in writing.**—The report of the jury shall be reduced to writing, signed by a majority of the jurors, delivered to the sheriff, and by him returned into court.

SEC. 25 (1340). **Confirmation of report.**—If no objection is made to the report, it is confirmed by the court, and the land decreed to the petitioner, upon payment to the defendants, or to the clerk for their use, of the damages assessed, with costs. (*Ib.*, § 775, modified.)

SEC. 26 (1341). **Exceptions to report and new writ.**—Either party may object to the report of the jury, and the same may, on good cause shown, be set aside, and new writ of inquiry awarded. (Act 1849–50, ch. 72, sec. 5.)

SEC. 27 (1342). **Appeal, new trial.**—Either party may also appeal from the finding of the jury, and, on giving security for the costs, have a trial anew before a jury in the usual way. (*Ib.*, modified.)

SEC. 28 (1343). **Costs against appellant, when not.**—If the verdict of the jury, upon the trial, affirms the finding of the jury of inquest, or is more unfavorable to the appellant than the finding of such jury, the costs shall be adjudged against such appellant; otherwise the court may award costs as in chancery cases. (*Ib.*)

SEC. 29 (1344). **Appeal does not suspend work, how.**—The taking an appeal does not suspend the operations of the petitioner on the land, provided such petitioner will give bond with good security, to be approved by the clerk, in double the amount of the assessment of the jury of inquest, payable to the defendant, and conditioned to abide by and perform the final judgment in the premises.

SEC. 30 (1345). **Preliminary surveys, damages.**—A person or company actually intending to make application for the privileges herein contemplated, and entering upon the land of an-

other for the purpose of making the requisite examinations and surveys, and doing no unnecessary injury, is liable only for the actual damage done; and, if sued in such case, the plaintiff shall recover only as much costs as damages. (Iowa code, 1851, § 778.)

**SEC. 31 (1346). Damages to be prepaid, or bond on appeal.**—No person or company shall, however, enter upon such land for the purpose of actually occupying the right of way until the damages assessed by the jury of inquest and the cost have been actually paid; or, if an appeal has been taken, until the bond has been given to abide by the final judgment as before provided.

See 6 Cold., 162; 7 Heis, 518; 13 Lea, 671.

**SEC. 32 (1347). Owner may have inquest or sue for damages, when; proceedings.**—If, however, such person or company has actually taken possession of such land, occupying it for the purpose of internal improvement, the owner of such land may petition for a jury of inquest, in which case the same proceedings may be had, as near as may be, as hereinbefore provided, or he may sue for damages in the ordinary way, in which case the jury shall lay off the land by metes and bounds and assess the damages, as upon the trial of an appeal from the return of a jury of inquest.

See 2 Head, 65, 174; 3 Lea, 480; 13 Lea, 670.

**SEC. 33 (1348). Limitation of proceedings by owner.**—The owners of land shall, in such cases, commence proceedings within twelve months after the land has been actually taken possession of and the work of proposed internal improvement begun, saving, however, to unknown owners and nonresidents twelve months after actual knowledge of such occupation, not exceeding three years, and saving to persons under disabilities of infancy, coverture, and unsoundness of mind twelve months after such disability is removed, but not exceeding ten years.

See 12 Heis., 623.

**SEC. 34. Gauge, charges, highways.**—The Nashville & Tuscaloosa Railroad Company is authorized to adopt a gauge of

three feet or any other gauge that they may prefer. The charge of transportation shall not exceed twenty-five cents per hundred pounds on heavy articles and ten cents per cubic foot on articles of measurement for every hundred miles transported, and four cents per mile for every passenger, with power to make special contracts with shippers on their roads in regard to rate of freights so as not to exceed the amounts herein designated. The line or track of the road shall be so constructed as not to interfere with convenient travel of the public along the highways, county roads, streets, and alleys of cities, towns, and villages, and so as to allow carts, wagons, carriages, and other vehicles conveniently and safely to pass over or under the line or track, and so as not to interrupt traveling on foot or horseback, or in vehicles of any kind, from the necessary and proper use of the public road, street, or alley in the usual and proper mode of convenience.

By Acts 1885, ch. 20. all railway companies were authorized to adopt and alter at pleasure their gauge.

**SEC. 35. Crossings, signboards.**—Boards well supported by posts, or otherwise, shall be placed and constantly kept across each public road, when the same is crossed on the same level with the track of the railway, the boards to be elevated so as not to obstruct travel, and on each side of said board there shall be printed, in large letters, easily seen by the traveler, the words, “Railroad Crossing—Lookout for the Cars.” Said boards need not be put up in the crossings of streets and alleys in cities, towns, and villages, but this railroad company shall be subject to such proper regulations made by municipal authorities, in pursuance of general municipal powers regulating speed, pullages and flagmen in such municipalities and at crossings; where there are sidings and switches, the whistle shall always be blown at a distance of not less than two hundred and fifty yards from every crossing of a public road. When land on both sides of the track is owned by the same proprietor, convenient crossings shall be made and kept up at the expense of this corporation for the use of said proprietor, and the necessary cow-gaps made.



**SEC. 36. Regulations for running trains, fare must be paid.**

—The board of directors shall fix the regular times for the running of trains for the transportation of passengers and property, and shall furnish sufficient accommodation for their safe, comfortable, and convenient transportation, and shall take, transport, and discharge such passengers and property at, from, and to such places on the due payment of freights, tolls, and fare legally authorized to be charged therefor, and in case of the refusal of this corporation, their officers, or agents, to take and transport any passenger, or property, or to deliver the same, or either of them, at the regular and appointed time, such corporation shall pay to the party aggrieved all damages thereby suffered, with costs of the suit. If any passenger refuse to pay his toll or fare, the conductor may put him off the cars at any station or convenient point where said passenger can step on land.

**SEC. 37. Prohibited contracts; must receive freight from other roads.** — This corporation shall make no contract giving any person a preference in the speedy shipment of freights. This corporation shall receive on their road full freighted cars from other roads of the same gauge, and transport them, without breaking bulk, to the place of destination, charging for the goods, wares, and merchandise thereon no greater rate of freight than is charged for similar goods, wares, and merchandise in their own cars, and return said cars free of charge; *Provided*, The cars so to be received are good and substantial; *and also provided*, The distance said wares and merchandise are to be transported is not less than twenty miles.

**SEC. 38. Officers, directors, capital, shares.** — The said five corporators, viz.: E. F. Falconnet, L. S. Goodrich, G. H. Nixon, J. H. Moore, W. B. Russell, shall, within a convenient time after the registration of this charter in the office of the secretary of state, select from their number a president, secretary and treasurer, or the last two offices may be combined into one, and shall not necessarily be stockholders, said president and the other corporators to constitute the first board of directors. The board of directors of the Nashville & Tuscaloosa

Railroad Company may fix the amount of stock of the company and the number of shares into which the same may be divided, and under their direction subscription books may be opened to obtain stock, all other persons having an equal right with said original corporators to subscribe for stock until the full amount of said stock is subscribed. When a sufficient amount of stock is subscribed, notice, personal or by advertisement in a newspaper where the principal office of the company is kept, is to be given of the time and place for an election of officers. The result of all the elections is to be determined by a majority of the votes cast, each share to represent one vote. The board of directors may at any time increase the capital stock, if the necessities of the corporation, in their estimation, require said increase.

**SEC. 39. May enter upon private lands.**—The company, by its officers and agents, may enter upon the lands of private persons for the purpose of making surveys, estimates, and location of route.

**SEC. 40. Shares of stock personalty.**—The stock is to be impressed with the character of personal property.

We, the undersigned, apply to the State of Tennessee, by virtue of the law of the land, for a charter of incorporation for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, this thirtieth day of May, 1877.

E. F. FALCONNET,  
G. H. NIXON,  
L. S. GOODRICH,  
J. H. MOORE,  
W. B. RUSSELL.

The above charter was properly acknowledged and registered in the register's office of Hickman county, in book T, p. 261; and in secretary of state's office, in book A, p. 475.

## CHAPTER XVIII.

*DEEDS TO NASHVILLE & TUSCALOOSA RAILROAD AND ROAD  
FROM KIMMINS TO MANNIE, ON ALLEN'S CREEK.*

### **DEED TO THAT PART OF ROAD FROM DICKSON TO CENTREVILLE.**

NASHVILLE & TUSCALOOSA RAILROAD COMPANY, )  
TO—*Deed.* )  
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY. )

WHEREAS, A contract was entered into by and between the Nashville, Chattanooga & St. Louis Railway and the Nashville & Tuscaloosa Railroad Company on the twenty-ninth day of July, 1880, providing that the former company should extend the Nashville & Tuscaloosa Railroad from Graham station to a point on the north bank of Duck river opposite Centreville, about thirteen miles, and, in consideration of such extension, the Nashville & Tuscaloosa Railroad Company agreed to convey in fee simple, all of its railroad from Dickson, Tenn., to Centreville, Tenn., together with its rights, franchises, equipments, appurtenances, etc., to the Nashville, Chattanooga & St. Louis Railroad; and,

WHEREAS, The said Nashville, Chattanooga & St. Louis Railway has complied in every particular with the contract so made, and has constructed and completed said extension from Graham to a point on the opposite side of Duck river from Centreville. Now, therefore, in consideration of the premises, the said Nashville & Tuscaloosa Railroad Company hath granted, bargained, sold, assigned, transferred, and conveyed, and by these presents doth grant, bargain, sell, assign, transfer, and convey unto the Nashville, Chattanooga & St. Louis Railway, and to its successors and assigns forever, all and singular that branch of the Nashville, Chattanooga & St.



Louis Railway known as the Centreville branch, and formerly known as the Nashville & Tuscaloosa Railroad, beginning at the junction of said branch and the line of said Nashville, Chattanooga & St. Louis Railway in Dickson county, State of Tennessee, and extending in a line to the town of Centreville, in Hickman county, in said state, a distance of thirty-four miles of completed road, together with all and singular the appurtenances thereof, and all equipments, lands, tracks, lines, rails, bridges, erections, fences, walls, fixtures, privileges, rights and interests, choses in action, leaseholds, and other things of every kind, nature, and character belonging or appertaining to said road, and all the tolls, incomes, uses, and profits to be had or demanded from the same or any part or proportion thereof, and all railway stations and depots, with all appurtenances necessary and convenient for the sole, complete, and entire use and operation as well as maintenance of the said roads or railways, herein conveyed with its equipments, appurtenances, and all its other property, real, personal, and mixed, and all the rights, privileges, and franchises of the said Nashville & Tuscaloosa Railroad Company pertaining to the roads and railways herein conveyed, or any of them, or the operation, use, or enjoyment thereof, and also all right to use the roadbeds, tracks, sidings, turnouts, and switches constructed at the execution of these presents.

Franchises,  
rights, etc.,  
pass.

To have and to hold the said railroads and appurtenances, and equipments and estate, property, rights, privileges, franchises, and interests above conveyed or transferred, or intended so to be, together with all and singular the emoluments, incomes, and advantages, tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, and the reversion or reversions, rents, issues, and profits thereof, unto the said Nashville, Chattanooga & St. Louis Railway, its successors and assigns, forever. And the said Nashville & Tuscaloosa Railroad Company covenants to and with the said Nashville, Chattanooga & St. Louis Railway, and its assigns and successors forever, that the said premises herein conveyed are free and unincumbered, and that it has full right to convey the

same, and that it will forever defend the title to the same against the lawful claims of any and all parties whatever.

In witness whereof, the Nashville & Tuscaloosa Railroad Company has caused its corporation name to be signed hereto, by its president and secretary, this thirteenth day of March, 1883. [SEAL] JAS. D. PORTER, *President*.

J. H. AMBROSE, *Secretary*.

The above deed was properly acknowledged and registered in the register's office of Hickman county, in trust deed book No. 2, p. 552-54.

**DEED TO THAT PART OF ROAD FROM CENTRE-  
VILLE TO LEWIS COUNTY LINE,  
NEAR KIMMINS.**

NASHVILLE & TUSCALOOSA RAILROAD COMPANY, }  
TO—*Deed*. }  
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY. }

This indenture, made and entered into this twentieth day of June, 1884, by and between the Nashville & Tuscaloosa Railroad Company and the Nashville, Chattanooga & St. Louis Railway, both being corporations created and existing under the laws of the State of Tennessee, witnesseth: that,

WHEREAS, Under a contract entered into between the two companies, the Nashville, Chattanooga & St. Louis Railway have constructed, built, and completed a line of narrow gauge railway from Centreville, in Hickman county, to a point on the line separating Lewis county from Hickman county, a distance of thirteen miles; and,

WHEREAS, Under the terms of said contract, upon the completion of said line of road, the Nashville & Tuscaloosa Railroad Company agreed to convey the same in consideration of said building and construction thereof by the Nashville, Chattanooga & St. Louis Railway:

Now, therefore, in consideration of the premises, the said Nashville & Tuscaloosa Railroad Company hath granted, bargained, sold, and conveyed, and by these presents doth grant, sell, and convey, unto the Nashville, Chattanooga & St. Louis Railway, its assigns and successors, forever, all and singular

that branch of the Nashville, Chattanooga & St. Louis Railway known as the Centreville branch, and formerly known as the Nashville & Tuscaloosa Railroad at the extension of the same, beginning opposite the town of Centreville, in Hickman county, upon the north side of Duck river and extending by the way of Aetna furnace to the southern line of Hickman county separating it from Lewis county, a distance of thirteen miles of completed narrow gauge road, together with all and singular the appurtenances thereof, all the lands, tracks, lines, rails, bridges, ways, rights of way, buildings, erections, fences, walls, fixtures, privileges, rights and interests, real estate, contracts, leaseholds, and all other things of every kind, nature, and character, belonging or appertaining to said road, or any part or portion thereof, and all railway stations and depots with all appurtenances necessary and convenient for the sole, complete, and entire use and operation, as well as maintenance of said road or railway herein conveyed, also all right to use the roadbed, tracks, sidings, turnouts, and switches, constructed or to be constructed.

To have and to hold the said railroad and appurtenances, and estate, property, rights, privileges, franchises, **Rights, franchises, etc., pass.** and interests above conveyed or transferred, or intended so to be, together with all and singular the emoluments, incomes, tenements, and hereditaments and appurtenances thereto belonging or in anywise appertaining, and the reversion or reversions, rents, issues, and profits thereof, unto the said Nashville, Chattanooga & St. Louis Railway and its successors and assigns forever, as aforesaid, and the said Nashville & Tuscaloosa Railroad Company doth hereby covenant and agree to and with the said Nashville, Chattanooga & St. Louis Railway that it is the true and lawful owner of said property herein conveyed, and has a full right to convey the same, and that the same is free and unincumbered, and agrees and binds itself and successors forever to forever warrant and defend the title to the said property to the Nashville, Chattanooga & St. Louis Railway and its successors and assigns, against the lawful claims of all parties whatsoever.



In witness whereof, the said Nashville & Tuscaloosa Railroad Company has caused its president and secretary to affix the name of the said company hereto, with its corporate seal, the day and date first above written. Erasures and interlineations made on first, ninth, twentieth, twenty-first, and twenty-fourth line of first page were made before signing.

THE NASHVILLE & TUSCALOOSA RAILROAD COMPANY,

[SEAL.]

By JAS. D. PORTER, *President*.

The above deed was properly acknowledged and registered in the register's office of Hickman county, in trust deed book No. 3, pp. 60-62.

**DEED OF SOUTHERN IRON COMPANY TO NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY OF ROAD FROM KIMMINS TO MANNIE, ON ALLEN'S CREEK.**

WHEREAS, The Southern Iron Company, a corporation chartered by the laws of the State of Alabama, and which said corporation is now, and has been for some time, doing business in the States of Alabama and Tennessee and elsewhere, did, at a regular stockholders' meeting, held according to law, at which there was present twenty-one thousand five hundred and fifty-two shares of the capital stock of twenty-seven thousand shares, and all present voting for the following resolution:

"That, for improving the property of the company and thereby permanently increasing its earning capacity, the board of directors, by and through the officers of the company, be, and they are hereby, authorized and empowered to erect and equip three additional furnaces on land now owned by the company or to be acquired for this purpose, two of said furnaces to be located at or near Allen's creek, in Wayne county, Tennessee, and one on the company's Drouillard property, in Dickson county, Tennessee.

"2. That, to accomplish this and other purposes hereinafter mentioned, the directors be, and hereby are, authorized and empowered, in their discretion and as they may deem for the best interest of the company, (1) to sell or dispose of this company's narrow gauge railroad, extending from Ettna to Allen's creek, and make a deed thereto, or to mortgage the same."

I hereby certify the above to be a true copy of an extract from the minutes of the stockholders' meeting of the Southern Iron Company, held at Huntsville, Ala., on the third day of May, 1892, same being entered on page 72 of the minute book of the Southern Iron Company.

[SEAL.]

J. A. COOPER, *Secretary*.

AND, WHEREAS, in pursuance of said order of the stockholders, the directors of said company did pass the following resolution at a meeting of the board of directors of the Southern Iron Company, held August 6, 1892:

“The proper officers of the company are hereby authorized, empowered, and requested—

“2. To sell to the Nashville, Chattanooga & St. Louis Railway Company, at the price of \$125,000 (\$100,000 to be paid in lawful money and \$25,000 in bonds of the Nashville Iron, Steel & Charcoal Company), the narrow gauge owned by this company, extending from Kimmins, in Lewis county, Tennessee, to the Allen's creek mines of the company, in Wayne county, Tennessee, and to execute a deed thereto.”

I certify that the above is a correct copy of said resolution, and is entered on the minutes of the board of directors of this company.

THE SOUTHERN IRON COMPANY,

[SEAL.]

By J. A. COOPER, *Sec'y & Tres.*

AND, WHEREAS, Said Southern Iron Company has heretofore built and now owns a railroad beginning at Kimmin, a station on said railroad in the county of Lewis, in the State of Tennessee, near the southern line of Hickman county, in said state, and running from said station to the present terminus of said railroad at Mannie mines, on Allen's creek, in Wayne county, Tennessee, being a distance of eighteen miles as now laid out and constructed, consisting of roadbed, track, rails, crossties, chairs, iron, spikes, steel, splices, bolts, nuts, bridges, and all other property appurtenant thereto; also all lands adjacent to said road, and fifty feet distant from the center thereof, and which constitutes the right of way, whether the same constituted a part of the original tract

Width of right  
of way.

of said iron company or lands purchased by it from other persons; the lands purchased by it are described in the deeds of Lafayette Bates, Mrs. Byron Smith, — Gilbert, John Paxton, John Hensley, E. P. Groves and wife, Harrison Smethurst, H. T. Christian, Allen Vandever, F. B. Williams, Dr. Moses, D. K. Hines, J. G. Grinder, B. F. Perryhouse, R. J. Davidson, John Hensley, Mrs. J. Hulme, H. T. Christian, J. W. Christian, J. W. Linsey, D. T. Voorhees, A. Churchwell, Mrs. Churchwell, John Banks, A. C. Raspberry, W. P. Clark, and so much of the property originally bought by said Southern Iron Company as is included in said right of way as said road is now laid out and built; also, it has built section houses, depots, etc., on real estate not included in said right of way, and upon which section houses are now built as evidenced by the deeds of one or more of those named hereinbefore to said Southern Iron Company; also, said company owns lands which said Southern Iron Company have caused to be condemned, or has the right to condemn or has the license to use, as well as rights acquired by possession and use thereof, as is shown on map attached to this deed; and also franchises to operate said railroad and build the same and condemn property therefor; and,

WHEREAS, Said Southern Iron Company did heretofore convey said property, together with other property, to the Central Trust Company of New York, by mortgage dated the — day of —, 18—, and to enable it to make this conveyance, it has procured said trust company to release from the operation and effect of said mortgage, all the foregoing described property so that said Southern Iron Company might convey away the same; and,

WHEREAS, The said Southern Iron Company now desires to sell the same, in order to erect two furnaces at Allen's Creek, which are to cost in the neighborhood of two hundred thousand dollars; and,

WHEREAS, The Nashville, Chattanooga & St. Louis Railway is desirous of purchasing the same in the event said two furnaces are erected, and that said Southern Iron Company will ship all the products, freight, etc., of their furnaces over this line of railroad:



Now, then, for and in consideration of the premises and for the further consideration hereinafter set out, the said Southern Iron Company, by virtue of the foregoing resolutions, has this day bargained, and does hereby alien, confirm, convey, and sell to the Nashville, Chattanooga & St. Louis Railway, a corporation chartered by the State of Tennessee, all the foregoing described property.

The consideration referred to in the preamble to this deed is such that the said Nashville, Chattanooga & St. Louis Railway  
**Consideration.** is to pay one hundred and twenty-five thousand dollars for the same, twenty-five thousand dollars of which is to be paid in first mortgage bonds of the Nashville Iron, Steel & Charcoal Company, the receipt of which is hereby acknowledged, and the remaining one hundred thousand dollars to be paid as the work on the said furnaces, to be erected as aforesaid, progresses. It is distinctly understood and agreed, however, and made a part of this consideration, that the said Southern Iron Company is to build the said two furnaces at Allen's creek, and expend all of the one hundred and twenty-five thousand dollars referred to above in their erection; that they are to ship all products of these furnaces over the Nashville, Chattanooga & St. Louis Railway, and pay a uniform rate of twenty-five cents per ton to or from Allen's creek in excess of rates to or from *Ætna*, and on all shipments of ore, limestone, wood, and charcoal, they are to pay twenty-five cents per ton between Allen's creek and *Ætna*.

And the said Southern Iron Company covenants hereby that it is lawfully seized and possessed of all the personal and real estate and property aforesaid, together with the rights of way described herein, and upon which said railroad is located and constructed; that all of said property hereby conveyed it has a right to convey, and that all of said property so conveyed is free and clear of all liens, taxes, and other incumbrances. And said Southern Iron Company furthermore covenants and will forever warrant title to all the real estate herein described to the Nashville, Chattanooga & St. Louis Railway, its assigns and successors, forever. It further covenants and agrees to reim-

burse the Nashville, Chattanooga & St. Louis Railway in any moneys which it may pay, or is compelled to pay hereafter, to secure and make perfect the right of way and title to any real estate which is herein conveyed or sought to be conveyed.

IN WITNESS WHEREOF, The Southern Iron Company has caused this instrument to be subscribed by its president and attested by its secretary and the corporate seal of said company to be hereto affixed, this the twenty-fourth day of September, A.D. 1892.

THE SOUTHERN IRON COMPANY,

[SEAL.] By A. M. SHOOK, *President*.

Attest: J. A. COOPER, *Secretary*.

STATE OF TENNESSEE, DAVIDSON COUNTY.

I, Charles F. Pollock, a notary public of the State of Tennessee, residing in Nashville, do hereby certify that A. M. Shook, the president of the Southern Iron Company, and J. A. Cooper, the secretary of the same company, whose names are signed to the foregoing instrument, and who are known to me to be the president and secretary of said company, and with whom I am personally acquainted, acknowledged before me, on this day, that they executed the said instrument on the day the same bears date, as their act and deed as the president and secretary, respectively, of said company, for the purposes therein contained.

And the said A. M. Shook and J. A. Cooper, being by me first duly sworn, did depose and say that he, the said Shook, was the president of the Southern Iron Company; that he, the said Cooper, was the secretary of the same company; that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, was the corporate seal of said company; that it was affixed hereto by order of the board of directors of the said company; and that they signed their names hereto by the like order, as the president and secretary of the said company, respectively.

In witness whereof, I have hereunto set my hand and fixed my official seal, this, the twenty-fourth day of September, one thousand eight hundred and ninety-two.

[SEAL.]

CHARLES F. POLLOCK, *Notary Public*.

## CHAPTER XIX.

*THE DUCK RIVER VALLEY NARROW GAUGE RAILROAD  
COMPANY.*

(COLUMBIA BRANCH.)

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—On October 2, 1879, the Duck River Valley Narrow Gauge Railway Company leased its road, appurtenances, fixtures, properties, etc., to the Nashville, Chattanooga & St. Louis Railway for a period of forty years. After operating the road for some time under this lease, a proposition was submitted by the stockholders of the latter company to sell said road, its rights, privileges, franchises, etc., to the said Nashville, Chattanooga & St. Louis Railway, which was accepted.

On November 23, 1887, in pursuance of a resolution of the stockholders of the Duck River Valley Narrow Gauge Railway Company, held March 8, 1887, at Columbia, Tenn., the said company executed a deed to its road, right of way, appurtenances, properties, rights, privileges, franchises, etc., to the Nashville, Chattanooga & St. Louis Railway, and the lease was formally terminated. The consideration was that the Nashville, Chattanooga & St. Louis Railway should widen said railroad track to a standard gauge, and to operate the same as a broad gauge railroad; to assume certain stock notes of said Duck River Valley Narrow Gauge Railroad Company, not exceeding \$5,517, and, in addition, \$772.10 to cover interest thereon; and the further consideration that the said Nashville, Chattanooga & St. Louis Railway should assume the mortgage debts of said railroad company as shown in two mortgages, one registered in the register's office of Maury county, in book Z, vol. 2, p. 200, securing \$250,000 of bonds; and the other registered in mortgage book D, vol. 3, p. 329, to secure \$140,000 of bonds. Said deed is acknowledged and of record in the register's office



of Maury county, in book O, vol. 3, pp. 484-488; in Marshall county, in book E, No. 2, pp. 61-64; in Lincoln county, in record of deeds, book S, pp. 350-355. The deed is also inserted herein. See next chapter.

1. The road has subsequently been changed to a broad gauge, and is now being operated in compliance with the terms of sale.

2. **Legality of the purchase of the road and franchises.**—The purchase of this railway and franchises of the company was legal. Under the Acts of Tenn., 1871, ch. 69, which superseded the Acts of 1871, ch. 22, it was provided that "every railroad corporation in this state, whether created under a general or special law, shall have the power to acquire, by purchase or other lawful contract, and have, hold, use and operate any railroad, with its franchises, belonging to any other railroad corporation."

**What franchises, etc., passed under this sale.**—In addition to the road, properties, etc., therein conveyed, the deed specifically transferred all rights, franchises, right of way, etc., of said Duck River Valley Narrow Gauge Railroad Company. For the enumeration of the said rights, franchises, etc., see *charter*, further on in this chapter.

**Width of right of way.**—The charter of this company was granted by the chancery court of Humphreys county, at Waverly, Tenn., at its November term, 1872. The decree of incorporation may be found in minute book No. 1, page 745, *et seq.*, of that court. It is also set out herein further on in this chapter. The charter was granted under the provisions of an act of Tennessee, 1870-71, ch. 54, p. 63, passed January 30, 1871, entitled, "An Act to authorize the chancery courts to grant letters of incorporation." The decree of incorporation provided, among other things, that the said company should possess all the powers, etc., of the Tennessee & Alabama Railroad Company and the Nashville & Decatur Railroad Company, and, in addition, all the rights, powers, etc., granted to railroad companies by the act of the general assembly, chapter 54, approved January 30, 1871, and all amendments thereto.

The supreme court of Tennessee, in construing this charter, held that it was valid as to all the powers conferred by the acts of 1870-71, ch. 54, approved January 30, 1871, and the amendments thereto, as referred to above, but that that part of the incorporating decree attempting to vest in the company all the

powers conferred in the charter of the Nashville & Decatur and Tennessee & Alabama Railroad Companies was *void*. See *Williams et al. v. Duck River Valley Narrow Gauge Railroad Company et al.*, 9 Bax. (Tenn.), 488. This being so, the width of the right of way must be determined by the Acts of 1870-71, ch. 54, p. 63, and the amendments thereto, as nothing appears in the charter of the company upon the subject, save a reference to this act. Subsection 8, of section 15 of that act, provides that, "said corporation, when thus incorporated, shall have the right to take and appropriate the land of any individual, over whose land the line of said road runs, for the right of way, not exceeding *two hundred feet in width*, and for necessary depot grounds, switches, car houses, and workshops," in a mode therein set out. In addition, re-subsection 6, of subsection 8, of section 15, of said act, which may be found on page 71, provides, among other things, that, "when possession has been taken by the company, for the use of said railroad, the owners shall commence their proceedings for damages against the railroad, for the appropriation of their land for its necessary use, within *twelve months* after the land has been actually taken possession of, and work begun, or their right is, and shall be barred, saving, however, to unknown persons and nonresidents, *twelve months* after the actual knowledge of such occupation, not *exceeding three years*, and saving to persons under disabilities of infancy, coverture, and unsoundness of mind, *twelve months* after the removal of such disabilities."

Under these acts, the Duck River Valley Narrow Gauge Railroad Company could have condemned any number of feet for its right of way, up to and including two hundred. Whatever width it may have *condemned* through each landowner's premises will now be binding upon the Nashville, Chattanooga & St. Louis Railway. Should no condemnation have been had at all, then the landowners would now be barred from recovering compensation, unless they applied in time for assessment of damages as provided in the above act, and the Nashville, Chattanooga & St. Louis Railway, as the lawful purchaser of said road, right of way, *franchises*, etc., would be entitled to *two*

*hundred feet.* The supreme court, in construing this act in reference to the right of way of this company, held that, "assuming that the company might, by following the statute, have taken and appropriated, at its option, less than one hundred feet (on each side), yet having failed, in any manner, to designate the land to be appropriated, their entry and the construction of their road must be regarded as an *appropriation* of so much of the land as the law authorized," which was two hundred feet. *Duck River Valley Narrow Gauge Railroad Company v. Cochrane*, 3 Lea (Tenn.), 478.

It is probable that the statute of limitations would run against the railway, under this act, as to such parts of right of way as adjoining landowners may be allowed to use and occupy for the statutory period, which is not the case on the main line and most of the branches. See discussion as to right of way on main line in notes to secs. 24 and 25 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1, herein.

**Distance built when road purchased.**—The line from Columbia to Fayetteville, a distance of about forty-nine miles, had been completed when the Nashville, Chattanooga & St. Louis Railway purchased this road.

**Where road chartered termini.**—The Duck River Valley Narrow Gauge Railroad Company was chartered by the chancery court, at Waverly, Tenn., on November 4, 1872, as will appear from minute book 1, page 745 *et seq.*, of said court, which decree is also set out herein below. The road was chartered to run from a point at or near the town of Johnsonville, in Humphreys county, to a point at or near the town of Fayetteville, in Lincoln county, passing through or near to the towns of Centreville, in Hickman county; Columbia, in Maury county; Lewisburg, in Marshall county, and Petersburg, in Lincoln county, with the right, power, and privilege to extend said road from Fayetteville to the Nashville & Chattanooga Railroad, and to build any branch the company saw fit. The company built the road from Columbia to Petersburg, and then leased the road to the Nashville, Chattanooga & St. Louis Railway. While operating the road under this lease, the latter company extended the road to Fayetteville, under the charter of the said Duck River Valley Narrow Gauge Railroad Company, and subse-



quently purchased the entire line from Columbia to Fayetteville, as heretofore explained.

The road from Fayetteville to the Nashville, Chattanooga & St. Louis Railway was not built under the authority above granted, but under the charter and amendments of the Winchester & Alabama Railroad Company. See charter of that road. Refer to index.

## ORIGINAL CHARTER OF DUCK RIVER VALLEY NARROW GAUGE RAILROAD.

(Granted by chancery court at Waverly, Tennessee, under Acts Tenn., 1870-1, ch. 54; see minute book 1, p. 745.)

E. F. FALCONETTE ET ALS., EX PARTE.

**SECTION 1. Preamble.**—This cause came on and was finally heard this fourth day of November, 1872, by and before the Hon. George H. Nixon, chancellor, holding the chancery court at Waverly, Humphreys county, Tennessee, upon the original and amended petition heretofore filed in this case, and the proceedings heretofore had herein, and the statement of the president and directors of the Duck River Valley Narrow Gauge Railroad Company, and the petition of said president and directors, praying to be chartered and incorporated as a corporation and body politic by the name and style of the Duck River Valley Narrow Gauge Railroad Company.

And it appearing to the court that, by former decrees of this court in this case, commissioners have heretofore been appointed to solicit and receive subscriptions of the capital stock, for the purpose of building and constructing a narrow gauge railroad from, at, or near the town of Johnsonville, in Humphreys county, to the town of Fayetteville, Lincoln county, Tennessee; and that said commissioners have received subscriptions of the capital stock of said company the sum of about one hundred and fifty thousand dollars; that the length of said contemplated railroad, including side tracks, is about one hundred and thirty miles, and the amount so subscribed exceeds the sum of one thousand dollars per mile; and, it appearing to the court that, after having first given notice, as required by law, the stockholders of said proposed railroad met in the town of Columbia, Maury county, Tennessee, on the eleventh of Septem-

ber, 1872, for the purpose of organizing said company and electing nine directors thereof, when the following persons were duly elected as said directors, to wit: L. S. Goodrich, Humphreys county, Tennessee; O. A. Nixon and H. A. Shause, Hickman county, Tennessee; Ed Williams and L. D. Myers, Maury county, Tennessee; R. G. McClune, Marshall county, Tennessee; W. B. Hampton, Lincoln county, Tennessee; William Smith, Moore county, Tennessee; M. R. Campbell, Coffee county, Tennessee; that on September 12, 1872, said directors so elected met in the town of Columbia, in said county of Maury, and, after having been first duly sworn by Benjamin Harrison, Esq., an acting justice of the peace for said county of Maury, proceeded to organize said company, and elected L. D. Myers, one of said directors, president of said company, and elected E. F. Falconnette, chief engineer, and John B. Hamilton, secretary and treasurer, of said company.

And it appearing from the statements of said president and directors of said company, signed by said president and directors, and countersigned by the said secretary and treasurer thereof, officially attested by said secretary and treasurer of said company, and proved and acknowledged as deeds for lands are required to be probated, and which said statement is filed as a part of the record in this cause, and which statement sets forth the names and places of residence of each of the directors of said company, the name and style of the company, the description of the line, the terminus of said road, the general route, the amount of capital stock required for its construction, the amount actually subscribed, the shares into which the capital stock is divided, and the amount of said capital stock so subscribed, that has at this time been paid in and collected.

And, it appearing to the court that said company so organized for the purpose of building and constructing a narrow gauge railroad from Johnsonville, Humphreys county, to Fayetteville, Lincoln county, Tennessee, have had said road surveyed, have adopted as the name and style of said company, The Duck River Valley Narrow Gauge Railroad Company, and have divided the capital stock thereof into shares of twenty-

five dollars each, have adopted as the present termini of said road at or near the town of Johnsonville, Humphreys county, and at or near the town of Fayetteville, Lincoln county, Tennessee, and that by calculation and survey, it is estimated that the amount required for the construction of said road is about eight hundred and eighty thousand and sixty-three dollars.

And it further appearing that said president and directors of said company contemplate extending said railroad from the said town of Fayetteville to the Nashville & Chattanooga Railroad, and desire to have granted them the right, power, and privilege of building and constructing such branches to their said railroad, in the State of Tennessee, as they may deem necessary and proper to advance the interest of their said railroad, and of the public.

And it further appearing to the court that said railroad company have in all respects fully complied with the law in this behalf, and the court being of opinion that the said railroad company have a right to be chartered and incorporated, and that the rights and privileges by them prayed and asked for are not in conflict with the public good and morals, nor with the constitution and laws of the State of Tennessee or of the United States:

**SEC. 2. Incorporation, name, general powers.**—It is therefore ordered, adjudged, and decreed, by the court, that said railroad company, and said president and directors thereof, be, and are hereby, chartered and incorporated as a body corporate and politic by the name and style of the Duck River Valley Narrow Gauge Railroad Company, and by such name to sue and be sued, plead and be impleaded, and to have and enjoy a right of succession for ninety-nine years, with a capital stock of one million dollars, with the right, power, and privilege to increase the same to five million dollars, and with the right, power, and privilege on the part of said company to build and construct a railroad with such breadth or gauge thereof as they may desire, elect, and adopt from a point at or near the said town of Johnsonville, in Humphreys county, to a point at or near the said town



of Fayetteville, Lincoln county, Tenn., passing through or near the town of Centreville, Hickman county; Columbia, Maury county; Lewisburg, Marshall county; Peters-<sup>Route.</sup>burg, Lincoln county, Tenn., with the further right, power, and privilege on the part of said railroad company to extend said railroad, if the president and directors and a majority of the stockholders may desire, elect, and determine, from said town of Fayetteville to the Nashville & Chattanooga Railroad, and to build any branch or branches to said Duck River Valley Narrow Gauge Railroad that the said <sup>May build branches.</sup> president and directors, by and with the advice and consent of the stockholders of said railroad, may desire, determine, and elect, and with all the rights, powers, and privileges heretofore granted by the general assembly of the State of Tennessee to the Tennessee & Alabama Railroad and Nashville & Decatur Railroad Companies,\* and with all the rights, powers, and privileges granted to railroad companies by the act of assembly of State of Tennessee, ch. 54, approved January 30, 1871, and all acts of said general assembly amendatory thereof, and with the further right, power, and privilege to do all things necessary and proper for the building and constructing of said railroad, and to pass all by-laws, rules, and regulations not inconsistent with the constitution and laws of the United States or the State of Tennessee.

Ordered, that the clerk and master of this court certify a copy of this decree to the president of said company, and that said company and L. S. Goodrich, their security, pay the cost of this cause, for which execution will issue.

Ordered, that court adjourned.

[SIGNED.]

G. H. NIXON, *Chancellor.*

1. The above decree is of record in the office of the chancery court at Waverly, Tenn., in minute book 1, p. 745. Humphreys county, Tenn.

\*2. **Charter construed.**—The supreme court, in construing this charter, held that the part of the above incorporating decree attempting to vest in the company all the powers conferred in the charters of the Nashville & Decatur and Tennessee & Alabama Railroad Companies was void, but that the charter was valid as to all powers conferred as contained in Acts 1870-71, ch. 54, approved January 30, 1871, and amendments thereto, as referred to in the above decree. 9 Bax. (Tenn.), 488.

3. **Same; width of right of way.**—The supreme court in another case, in construing this charter, held that "even assuming that the company

might, by following the statute, have taken and appropriated, at its option, less than one hundred feet on each side, yet having failed in any way to designate the land to be appropriated, their entry and construction of their road must be regarded as an appropriation of so much of the land as the law authorized," which was two hundred feet. 3 Lea (Tenn.), 478.

4. For full discussion of railway's ownership of right of way, etc., see index.

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## CHAPTER XX.

### *DEED TO DUCK RIVER VALLEY NARROW GAUGE RAILROAD.*

[EXECUTED NOVEMBER 23, 1887.]

#### **DEED.**

WHEREAS, The Duck River Valley Narrow Gauge Railroad Company is a corporation chartered under the laws of the State of Tennessee, and which heretofore built and operated a railroad from the city of Columbia, in the county of Maury, State of Tennessee, to the town of Fayetteville, in the county of Lincoln, state aforesaid; and,

WHEREAS, Heretofore, on the second day of October, 1879, said Duck River Valley Narrow Gauge Railroad Company leased its road, with all its appurtenances, fixtures, and property, to the Nashville, Chattanooga & St. Louis Railway Company for a period of forty years; and,

WHEREAS, Both parties to said lease desire to end the same, heretofore said Duck River Valley Narrow Gauge Railroad Company, together with the stockholders, adopted the following resolutions, to wit:

WHEREAS, At a meeting of the stockholders of the Duck River Valley Narrow Gauge Railroad Company, held on the eighth day of March, 1887, at Columbia, Tennessee, a com-

mittee was appointed to confer with the Nashville, Chattanooga & St. Louis Railway Company, with the view to agree on terms for the sale and purchase of the property and franchises and individual stock of this company to the Nashville, Chattanooga & St. Louis Railway; and,

WHEREAS, James S. Ewing, T. D. Williamson, W. J. Leonard, F. J. Ewing, W. J. Andrews, and E. C. McDowell were appointed a committee, under this resolution, to treat with the said Nashville, Chattanooga & St. Louis Railway, and, after conference with said Nashville, Chattanooga & St. Louis Railway, the terms of agreement suggested by said committee, and accepted by said Nashville, Chattanooga & St. Louis Railway, were adopted, as follows:

Articles of agreement and contract entered into by and between the Duck River Valley Railroad Company, its directors and stockholders, to be known herein as the party of the first part, and the Nashville, Chattanooga & St. Louis Railway, to be known as the party of the second part.

1. The party of the first part agrees and binds itself and themselves to transfer and deliver to the party of the second part, by the first of September, 1887, all the stock now held by the individuals or corporations in the company of the party of the first part, and to deliver to the party of the second part, all the property of every nature and kind belonging to said company, including franchises, roadbed, cross-ties, depot houses, depots, switches, turnouts, iron, tools, implements, and fixtures, cars, engines, and all property used or necessary to be used in the operations of said road, and now used and owned thereby.

2. Upon which being done, as set out in the first section hereof, the Nashville, Chattanooga & St. Louis Railway agrees to accept said stock, property, and franchises, and binds itself to make said railroad track to the standard gauge, and to equip the same as a good, substantial, standard gauge railroad, by the thirty-first day of December, 1888, and to operate the same under its franchises and charter, as a part of the Nashville, Chattanooga & St. Louis Railway system, at the expense of the



party of the second part, and to assume and pay certain stock notes of the Duck River Valley Narrow Gauge Railroad, not exceeding five thousand five hundred and fifteen dollars, and interest thereon. And the party of the second part agrees and undertakes, as owner of said corporation, to take care of all the mortgage debts of the party of the first part, and, as respects these, to be substituted to the liabilities of the party of the first part; and,

WHEREAS, Said proposed agreement was reported back to an adjourned meeting of the stockholders of the Duck River Valley Narrow Gauge Railroad Company, held at Columbia, on the twenty-second day of March, 1887, and a resolution was adopted at said meeting authorizing the directors of said railroad company to apply to the county court of Marshall county and to the city of Columbia, requesting that an election be had under the law providing for that purpose, to authorize the sale of the stock held by the said county and said city of Columbia, as well their assent to the sale and transfer of the corporate property of said railroad; and,

WHEREAS, Said election was held on the sixth day of August, 1887, for the county of Marshall, and on the twenty-second day of June, 1887, for the city of Columbia, and resulted in authorizing the sale of the stock of said city of Columbia and said county of Marshall, and of the corporate property, franchises, rights, etc., as set out in the articles of agreement as proposed between said committee and the said Nashville & Chattanooga Railway to the said Nashville, Chattanooga & St. Louis Railway, in accordance with the laws of the State of Tennessee; and,

WHEREAS, The individual stockholders of this company have also authorized and ratified the sale of their stock and of the corporate property and franchises of this company to said Nashville, Chattanooga & St. Louis Railway:

NOW, THEREFORE, Be it resolved by the stockholders of the Duck River Valley Narrow Gauge Railroad Company, in regular annual convention assembled, that the proposed agreement as hereinbefore set out, made between said committee and said

Chattanooga & St. Louis Railway, be, and the same is hereby, ratified and adopted, and the president and directors of the company are hereby authorized, empowered, and directed to execute all proper deeds and conveyances and all other articles of agreement necessary to convey all of the rights, properties, franchises, and easements and immunities of this company in and to its railroad, running from the city of Columbia, in the county of Maury, through Lewisburg, in Marshall county, to Fayetteville, in the county of Lincoln, being between forty-eight and forty-nine miles of narrow gauge railroad, together with all sidings, turnouts, switches, properties, depots, depot grounds, tools, rolling stock of every kind and nature whatever used in operating and carrying on the business of said railroad company, to the Nashville, Chattanooga & St. Louis Railway, upon the terms and conditions set out in said agreement aforesaid; and,

WHEREAS, The city of Columbia owned stock in said railroad company to the amount of fifty thousand dollars, and the county of Marshall owned stock in said railroad company to the amount of one hundred and fifteen thousand five hundred dollars, and the county of Maury owns fifteen hundred dollars of said stock of said railroad company, and certain individuals owned the balance of said stock; and said county of Marshall and said city of Columbia have, by a vote of the people, according to the laws of the State of Tennessee, and by the requisite majority, as well as other stockholders, ratified said agreement hereinbefore set out; and,

WHEREAS, It is now desired to execute said contract and agreement in full, and, to this end, the following deed or contract is entered into:

1. The Duck River Valley Narrow Gauge Railroad Company does hereby bargain and sell, and transfer and deliver, to the Nashville, Chattanooga & St. Louis Railway, its road aforesaid, with the franchises thereof and all the property, including road-bed, cross-ties, depot houses, depots, switches, turnouts, tools, engines, easements, rights of way, real estate, cars, etc., used to carry on said road; and also has caused its stockholders to

transfer the stock of the corporate and individual stockholders in said corporation, except a small amount of stock held by individuals, to said Nashville, Chattanooga & St. Louis Railway.

And, in consideration of the premises, the Nashville, Chattanooga & St. Louis Railway hereby agrees to accept said franchises, property, and stock aforesaid, and hereby covenants, agrees, and binds itself to widen said railroad track to the standard gauge, and to equip the same as a good standard gauge railroad, with steel rails, by the thirty-first day of December, 1888, and to operate the same under the franchises and charter of said Duck River Valley Narrow Gauge Railroad, at the sole expense of the Nashville, Chattanooga & St. Louis Railway.

And it further assumes to pay certain stock notes of said Duck River Valley Narrow Gauge Railroad Company not exceeding in amount five thousand five hundred and fifteen dollars and \$772.10 to cover interest thereon; and it will, upon the execution and acknowledgment of this deed of conveyance, deliver its certified check for said sum; and said Nashville, Chattanooga & St. Louis Railway hereby assumes to take care of the mortgage debts of said railroad company, as shown in two mortgages, one registered in the register's office of Maury county, book Z, vol. 2, pp. 200-210, securing two hundred and fifty thousand dollars of mortgage bonds and interest thereon, and the other registered in mortgage book O, vol. 3, pp. 329-337 inclusive, in the said office of said county, securing the payment of one hundred and forty thousand dollars of said bonds and interest thereon.

And the said Duck River Valley Narrow Gauge Railroad Company hereby covenants with the Nashville, Chattanooga & St. Louis Railway that it is lawfully seized and possessed of said property, and has a good right to convey the same, and it does hereby warrant and defend the title to said property to the said Nashville, Chattanooga & St. Louis Railway forever.

In witness whereof, the said Duck River Valley Narrow Gauge Railroad Company and the said Nashville, Chattanooga & St. Louis Railway have caused their proper officers of their



respective companies to affix the corporate names and seals of said companies hereto.

This 23d day of November, 1889.

DUCK RIVER VALLEY NARROW GAUGE RAILROAD COMPANY,

[SEAL.]

By J. A. McRADY, *President*.

H. K. MOSS, *Secretary*.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

[SEAL.]

By J. W. THOMAS, *President*.

J. H. AMBROSE, *Secretary*.

The above deed was duly acknowledged and registered in register's office of Maury county, in book O. vol. 3, pp. 484-488; in Marshall county, in book 2 E, pp. 61-64; in Lincoln county, in records deed book S, pp. 350-355.

## CHAPTER XXI.

*SEQUATCHIE VALLEY BRANCH.*

[COMPOSED OF JASPER, PIKEVILLE, AND INMAN BRANCHES.]

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—What is known as the Sequatchie Valley branch—that is, the road from Bridgeport, Ala., to Pikeville, Tenn., with a branch road on said stem from Victoria to Inman—may be divided into three parts: (1) The road from Bridgeport to Jasper, (2) the road from Jasper to Pikeville, (3) the road from Victoria to Inman. These three subdivisions were acquired by the Nashville, Chattanooga & St. Louis Railway in different ways. For convenience the first will hereafter be called the Jasper branch; the second, the Pikeville branch, and the third the Inman branch. Their method of acquisition, width of right of way, etc., will now be discussed in the order named.

**How Jasper branch acquired.**—The Jasper branch from Bridgeport, Ala., to Jasper, Tenn., was built by the Nashville, Chattanooga & St. Louis Railway, under and by virtue of an act of the legislatures of both Tennessee and Alabama. The Tennessee act, which may be found in Acts 1857–58, ch. 161, p. 382, sec. 3, provided, among other things “that the state aid heretofore granted to the Memphis & Charleston Railroad Company for the purpose of extending said railroad from Stevenson to Chattanooga, on the north side of Tennessee river, the sum of ten thousand dollars per mile, be, and the same is hereby, transferred and granted to the Nashville & Chattanooga Railroad Company for the purpose of constructing a branch railroad from Bridgeport, or some suitable point on the Nashville & Chattanooga Railroad, to some point on the line of the extension of said Memphis & Charleston Railroad, the same not to extend beyond the town of Jasper, in Marion county, with the same

liens retained to the state as are provided for in said act. For act itself, see next chapter.

The Alabama act, which may be found in Acts 1859-60, No. 216, provided "that the act granting the right of way to the Nashville & Chattanooga Railroad Company through Jackson county, and the privilege of constructing a bridge across Tennessee river in said county (approved January 21, 1850), be so amended that the Nashville & Chattanooga Railroad Company shall have the right to construct and operate a branch of their road from a point on the line of their road at or near Bridgeport, in Jackson county, to the Tennessee state line, in a direction to Jasper, Tenn., with all the rights, powers, and privileges pertaining to the main line, and subject to the same liabilities and restrictions."

For Acts of Alabama, approved January 21, 1850, above referred to, see p. 55 herein.

The Nashville & Chattanooga Railroad Company, which has subsequently changed its name to the Nashville, Chattanooga & St. Louis Railway, as heretofore explained, accepted the Tennessee act, as will appear from the minutes of the company of April 16, 1858, and, subsequently, the Alabama act. The road was then built from Bridgeport, Ala., to Jasper, Tenn., a distance of about twelve miles.

**Width of right of way of Jasper branch.**—As will appear from the above acts of Alabama, the road from Bridgeport, Ala., to the Tennessee state line was authorized to be constructed, with all the rights, powers, and privileges of the main line. Hence, the width of the right of way will be controlled by sections 24 and 25 of the charter of the Nashville, Chattanooga & St. Louis Railway, ch. 1, herein, which give one hundred feet on each side of the center of the road, in the absence of any contract with the original landowner to the contrary, when necessary for railroad purposes.

The act of Tennessee, above set out, authorizing the extension of the road from the Alabama state line to Jasper, does not specifically confer any particular width of right of way, but this was unnecessary, as the legislature had previously, by Acts



1849-50, ch. 266, sec. 3, passed January 19, 1850, provided "that the Shelbyville branch, and such other branches of the Nashville & Chattanooga road as may be made, shall have all the rights and privileges, and shall be placed in all respects on the same footing, with the Nashville & Chattanooga road." This being so, the width of right of way from the state line to Jasper would also be one hundred feet on each side of the center of the road, when necessary for railroad purposes, in the absence of any contract with the original landowner to the contrary. There can be no question of this.

1. For discussion of width of right of way in Nashville, Chattanooga & St. Louis Railway charter, which also controls here, see secs. 24 and 25 of said charter, ch. 1, herein.

2. For discussion of method of taking more than one hundred feet on each side of the center of the road, when necessary for railroad purposes, see "Right of Way," *Eminent Domain*, herein. Refer to index.

3. **State aid.**—By Acts Tenn., 1865-6, ch. 14, p. 33, state aid was granted to Nashville & Chattanooga Railroad Company to build the Jasper branch.

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**Pikeville branch, how acquired.**—The road from Jasper to Pikeville was authorized to be constructed by the Sequatchie Valley Railroad Company, which corporation was chartered by the Acts of Tenn., 1868-69, ch. 11, p. 93, sec. 30, to construct a road from Jasper, in Marion county, to Pikeville, in Bledsoe county. Said charter is set out further on in this chapter. After its incorporation the company built the road from Jasper to Victoria, and on January 27, 1877, in pursuance of a resolution of its stockholders and directors, it sold said road, right of way, franchises, etc., to the Nashville, Chattanooga & St. Louis Railway. The consideration was the assumption on the part of the latter company of all the liabilities of the said Sequatchie Valley Railroad Company, amounting to about \$75,000. A deed to said road, franchises, etc., is registered in the register's office of Marion county, Tenn., in book L, vol. 1, p. 308, which deed is also set out in the next chapter. After the purchase, as aforesaid, the Nashville, Chattanooga & St. Louis Railway, under and by virtue of the franchises ac-

quired thereby, extended the road from Victoria to Pikeville, under the charter of said Sequatchie Valley Railroad Company.

The purchase of this road, franchises, etc., was legal under Acts Tenn., 1871, ch. 69, which superseded the Acts of 1871, ch. 22.

**Width of right of way of Pikeville branch.**—There was no specified width for a right of way granted in the charter of the Sequatchie Railroad Company. In fact, it was not authorized by its charter to *condemn* property at all, but simply to purchase it. However, its charter granted it all the rights, powers, and privileges of other roads under the general improvement laws. Under these laws and the Acts of Tennessee, 1849–50, ch. 72, sec. 5, and of the code, § 1844 (Shannon's), all corporations authorized by law to construct a railroad were empowered to condemn property therefor, but the number of feet actually condemned would possibly now be binding upon the Nashville, Chattanooga & St. Louis Railway, under this charter. Where no condemnation was had at all, the width of the right of way would possibly be two hundred feet, as explained in the discussion of the width of right of way of the Nashville & Tuscaloosa branch.

1. In considering this question, regard must be had, however, to Acts Tenn., 1849–50, ch. 266, sec. 3, which provided "that all *branches* of the Nashville & Chattanooga Railroad Company as may be made, shall have all the rights and privileges, and shall be placed in all respects on the same footing, with the Nashville & Chattanooga road."

2. For discussion of this, see *Right of Way, Eminent Domain*, herein. Refer to index.

3. For right and method of recondemnation and broadening right of way, see index.

## ORIGINAL CHARTER OF THE SEQUATCHIE VALLEY RAILROAD COMPANY.

(Acts Tenn., 1868–69, ch. 11, p. 93, sec. 30.)

[PIKEVILLE BRANCH.]

**SEC. 30. Incorporation, name, general powers.**—*Be it further enacted*, That Wm. Pryor, Adam L. Kelly, Wm. H. Grayson, Dan M. Williams, ——— Carpenter, Henry Hart, F. A. Henager, B. F. Bridgeman, and C. C. Stranahan be, and they are hereby, created a body corporate and politic under the name

and style of the Sequatchie Valley Railroad Company, and by that name shall have power to contract and be contracted with, sue and be sued, plead and be impleaded, answer and be answered in any court of law or equity in the state, and may purchase, hold, lease, sell, and convey real estate and personal property to any amount that may be necessary to carry out the objects herein contemplated. They may have and use a common seal, and alter, change, or abolish the same [at] pleasure, and have succession for thirty years.

1. Sections 1 to 30 did not relate to this road. Sec. 30 of the act was the commencement of the charter.

2. **Right of way.**—As will be noticed, this charter does not specifically authorize the condemnation of a right of way, but simply its purchase. The section following, however, transferred to the company all the rights, powers, and privileges of other roads under the general improvement law. This law, and the Acts of 1849-50, ch. 72, sec. 5, together with the statutes set out in the code (Shannon's) § 1844, authorized all railroad companies to condemn land for a right of way. See, also, Acts 1849-50, ch. 266, sec. 3.

3. Another company was chartered by Acts Tenn., 1851-52, p. 186, to construct a railroad from Jasper to Pikeville, under the name of the Pikeville & Jasper Railroad Company, but said company was never organized.

**SEC. 31. Route, powers, capital stock, shares, elections, by-laws.**—*Be it further enacted*, That the object of said company shall be to construct a railroad from the town of Jasper, in Marion county, to Pikeville, in Bledsoe county; said company shall have and enjoy all the rights, powers, and privileges, and be subject to the same restrictions and liabilities, of other roads under the provisions of the general internal improvement law. The capital stock of said company shall be five hundred thousand dollars, and may be increased to one million of dollars at pleasure, which stock shall be divided into shares of one hundred dollars each, and when ten thousand dollars of *bona fide* stock shall have been subscribed, then the stockholders may meet and organize by the election of a president and such other officers as they may think proper, and fix the salaries of the same, and establish such by-laws as they may think proper not in conflict with the laws and constitution of the state or United States.

This road, together with its franchises, has been purchased by the Nashville, Chattanooga & St. Louis Railway, and now forms a part of



its general system. All by-laws are now enacted, directors elected, as well as all business transacted, under the charter of said Nashville, Chattanooga & St. Louis Railway. See charter in ch. 1, herein.

**SEC. 32. May unite with other companies, how.**—*Be it further enacted*, That said company may amalgamate or unite with any other company, on such terms as may be agreed upon not detrimental to the interests of the state; *Provided*, That no state aid is granted to said company. This act to take effect from and after its passage. (Acts Tenn., 1868-9, ch. 11, p. 93, sec. 30; passed December 9, 1868.)

**Inman branch, how acquired.**—The road from Victoria to Inman, commonly known as the "Inman Branch," was built by the Tennessee Coal, Iron & Railroad Company, under its charter, which authorized the building of branch roads to connect its mines with railways. After its completion, the said Tennessee Coal, Iron & Railroad Company, in pursuance of a resolution of its stockholders and directors, sold this road, its property, rights, privileges, and franchises to the Nashville, Chattanooga & St. Louis Railway, on January 1, 1883. The consideration paid was eighty-eight (88) \$1,000 bonds of the Nashville, Chattanooga & St. Louis Railway. A deed to said road is registered in the register's office of Marion county, in book N, vol. 1, p. 340-3, and which deed is also inserted in the next chapter.

The Tennessee Coal, Iron & Railway Company was chartered March 24, 1860, by Acts of Tennessee, 1859-60, ch. 198, p. 582, and was granted certain franchises in Alabama, by an act of the legislature of that state, passed February 10, 1893. The company was chartered in Tennessee as the "Tennessee Coal & Railroad Company," but, on September 13, 1881, the charter was amended so as to change its name to the Tennessee Coal, Iron & Railroad Company. The charter was also amended, July 16, 1889, May 10, 1892, and September 12, 1892, so as to increase its capital stock to \$21,000,000, and regulating the election of officers, etc. Section 1 of its charter authorized it to build railroads from any point on the Nashville & Chattanooga Railroad to any mineral lands. Section 2 of its charter authorized a mode of condemning lands. Section 3 of its charter authorized it to construct its railroad across or along any public road or water course.

**Purchase of this road legal.**—The purchase of this road, franchises, etc., was legal under Acts of Tenn., 1871, ch. 69, which superseded the Acts of Tenn., 1871, ch. 22.

## CHAPTER XXII.

*DEEDS, ACTS, ETC., RELATING TO SEQUATCHIE  
VALLEY BRANCH.***DEED OF TENNESSEE COAL, IRON & RAILROAD  
COMPANY TO NASHVILLE, CHATTANOOGA  
& ST. LOUIS RAILWAY OF ROAD FROM  
VICTORIA TO INMAN.**

For and in consideration of eighty-eight (88) bonds for one thousand dollars (\$1,000) each, numbered from one (1) to eighty-eight (88) inclusive, dated the first day of January, 1883, and payable in gold coin of the United States, in New York, forty years from said date, bearing interest at the rate of six per centum per annum with coupon interest warrants attached, payable in New York semiannually in like gold coin of the United States, on the first days of January and July of each year, which bonds with coupons attached thereto, are in the following forms—that is to say:

“UNITED STATES OF AMERICA.

“NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

“\$1,000.

FIRST MORTGAGE.

\$1,000.

“The Nashville, Chattanooga & St. Louis Railway, for value received, promise to pay to the Central Trust Company of New York, or bearer, the sum of one thousand dollars, in gold coin of the United States of the present standard of weight and fineness, in the city of New York, on the first day of January, in the year one thousand nine hundred and twenty-three, with interest payable in like gold coin of the United States at the rate of six per centum per annum on the first days of January and July of each year, upon the surrender of the annexed interest warrants, according to their tenor. The principal and interest of this bond is payable without relief from valuation or appraisement laws.

“ This bond with others issued and to be issued, is one of a series of like date, tenor, and effect, amounting in the aggregate to not more than sixteen thousand dollars on finished railroads, all such bonds being equally secured by a first mortgage on the extension of the Jasper branch railroad from Victoria to Inman, Marion county, Tennessee, and such further extensions or branches of said railroad as may be hereafter constructed under the resolution of the board of directors authorizing the construction of this branch, together with all their property, appurtenances, and franchises. Such mortgage is of even date herewith, executed and delivered unto the Central Trust Company of New York as trustee, and has been duly recorded in each of the counties of the State of Tennessee where said line of railroad is situated.

“ This bond shall pass by delivery or by transfer on the books of the said railway, at its agencies in the city of New York, and, after any such registration of ownership on the books of such agencies, duly certified on the back hereof by the transfer agent, no transfer hereof shall be valid or pass any title hereto, unless made in writing upon the books of such agency, unless the last precedent transfer has been made to bearer, in which event this bond shall become thereby transferable by delivery. This bond shall continue subject to successive registrations and transfers to bearer aforesaid, at the option of any holder thereof, in accordance with the above provisions. No bond of this series shall be valid or obligatory unless the same is duly authenticated by a certificate, indorsed on the back thereof, duly executed by the said Central Trust Company, as trustee.

“ IN WITNESS WHEREOF, The said Nashville, Chattanooga & St. Louis Railway has caused the foregoing to be attested by its president and secretary, and its corporate seal to be attached.

“ This, the first day of January, A.D. 1883.

“ \_\_\_\_\_, *Secretary.*                      \_\_\_\_\_, *President.*

[Trustee's Certificate.]

“ It is hereby certified that the within bond is one of a series of bonds which are all equally secured by the mortgage or deed



of trust mentioned herein, and delivered to the undersigned as trustee. CENTRAL TRUST COMPANY OF NEW YORK, *Trustee*.

“By \_\_\_\_\_, *President*.

[Form of Coupons.]

“§30. The Nashville, Chattanooga & St. Louis Railway will pay the bearer thirty dollars in gold coin of the United States, of the present weight and fineness, in the city of New York, being six months' interest on its bond No.—.

“R. C. BRANSFORD, *Secretary*.”

All of which bonds have been executed and delivered to the Tennessee Coal, Iron & Railroad Company, the receipt whereof is hereby acknowledged. The said Tennessee Coal, Iron & Railroad Company has granted, bargained, sold, assigned, transferred, and conveyed, and by these presents does grant, bargain, sell, assign, transfer, and convey unto the Nashville, Chattanooga & St. Louis Railway, and to its successor or successors and assigns, forever, a certain railroad, commencing at Victoria, Tenn., and running thence to Inman, Marion county, Tenn., about five and one-half miles, and known as the Inman branch, together with all and singular the estate and property, real, personal, and mixed, and all fixtures, rights, privileges, franchises and easements, and all the tracks, lines, rails, bridges, ways, rights of way, and materials, buildings, piers, wharves, erections, fences, walls, fixtures, privileges, rights and interests, real estate of every kind and character, and all the tolls, incomes, issues, and profits to be had or derived from the same, or any part or portion thereof, and all the railway stations and depots, with all the appurtenances necessary and convenient for the sole, complete, and entire use and operation of said branch railroad; also all and every other estate, interest, property, or thing, real, mixed, or personal, which the said Tennessee Coal, Iron & Railroad Company owns or holds belonging to, connected with, and being part of, and necessary or convenient for the use, occupation, operation, and enjoyment of said branch railroad and property, rights, privileges, and franchise, or any part or portion thereof; and also all the rights

and privileges to use the said roadbed, tracks, sidings, turn-outs, and switches constructed at the execution of these presents.

To have and to hold the said railroad and appurtenances and estate, property, rights, privileges, franchises, and interest above conveyed or transfered, or intended so to be, together with all and singular the emoluments, incomes, and advantages, tenements and hereditaments, and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, unto the said Nashville, Chattanooga & St. Louis Railway, its successors and assigns, in fee simple.

The Tennessee Coal, Iron & Railroad Company covenants that it is lawfully seized of said properties, has a good right to convey them, and that the same is unincumbered, and further covenants and binds itself and its successors that it will warrant and defend the title to the said properties to the said Nashville, Chattanooga & St. Louis Railway, its successors and assigns, against the lawful claims of all persons.

In witness whereof, the said Tennessee Coal, Iron & Railroad Company, in pursuance of authority given by the board of directors, has caused this indenture to be signed by its president and secretary, and the corporate seal of the company to be affixed hereto the interlineation on the first page, and seventh line from the bottom, being first made before signature. This first day of January, 1883.

TENNESSEE COAL, IRON & RAILROAD COMPANY,

[SEAL.]

By JAMES C. WARNER, *President*,

JAMES BOWRON, *Secretary*.

The above deed was properly acknowledged and registered in the register's office of Marion county. in book N, vol. 1, pp. 340-343.

**DEED OF SEQUATCHIE VALLEY RAILROAD  
COMPANY TO NASHVILLE, CHATTANOOGA  
& ST. LOUIS RAILWAY, OF ROAD FROM JAS-  
PER TO VICTORIA AND RIGHT TO BUILD TO  
PIKEVILLE.**

WHEREAS, By virtue of a resolution passed by the stock-

holders of the Sequatchie Valley Railroad Company, in words and figures as follows:

*Resolved*, That the Sequatchie Valley Railroad Company does hereby bargain and sell the railroad track, franchises, rights of way, and any or all other property belonging to this company, to the Nashville, Chattanooga & St. Louis Railway, and we do authorize and empower the president to sign all or any necessary papers to carry out this resolution, provided said Nashville, Chattanooga & St. Louis Railway will assume to pay all the liabilities of this company, supposed to amount now to the sum of about seventy-five thousand dollars; and,

WHEREAS, Said Nashville, Chattanooga & St. Louis Railway Company has this day assumed all the liabilities of this company:

Now, by virtue of the power in me vested, I do hereby bargain, sell, alien, and convey to said Nashville, Chattanooga & St. Louis Railway the railroad track, roadbed, right of way, franchises, and any or all other property belonging to said Sequatchie Valley Railroad Company, in as full, ample, and complete a manner as I or said company may or can do.

In testimony whereof, I have hereunto set the corporate name of said company by myself as president.

This twenty-seventh day of January, 1877.

SEQUATCHIE VALLEY RAILROAD COMPANY,

By W. J. KELLY, *President*.

We hereby approve of the sale of the Sequatchie Railroad to the Nashville, Chattanooga & St. Louis Railway.

J. P. WILLIAMS,

JAMES S. LIPSCOMB,

*Stockholders.*

The above deed was properly acknowledged and registered in the register's office of Marion county, in book L, vol. 1, p. 308.

### **Road from state line to Jasper authorized to be constructed by Tennessee Legislature, how, state aid to.**

SEC. 3. *Be it further enacted*, That of the state aid heretofore granted to the Memphis & Charleston Railroad Company, for the purpose of extending said railroad from Stevenson to



Chattanooga, on the north side of Tennessee river, the sum of ten thousand dollars per mile, be, and the same is hereby, transferred and granted to the Nashville & Chattanooga Railroad Company, for the purpose of constructing a branch railroad from Bridgeport, or some suitable point on the Nashville & Chattanooga Railroad, to some point on the line of the extension of said Memphis & Charleston Railroad, the same not to extend beyond the town of Jasper, in Marion county, with the same liens retained to the state as are provided for in said act.

The act above referred to granting aid to the Memphis & Charleston Railroad Company was Acts Tenn., 1853-54, ch. 311.

SEC. 4. *Be it further enacted*, That in case the Nashville & Chattanooga Railroad Company shall fail or refuse to construct said branch road, the same powers and privileges be, and the same are hereby, granted to the Memphis & Charleston Railroad Company; and either of said companies agreeing to construct said branch road as above provided, is hereby authorized to increase its capital stock to an amount sufficient, with the state aid, to construct said branch road.

If N. & C. R. R.  
fail or refuse,  
privilege to  
M. & C. R. R.

SEC. 5. *Be it further enacted*, That if both of said railroad companies shall fail or refuse to agree to construct said branch road within twelve months after the passage of this act, then said state aid, together with the powers and privileges above conferred, be, and the same are hereby, transferred and granted to the Junction, Jasper & Chattanooga Railroad Company. Said branch road in no event to extend beyond said town of Jasper. (Acts Tenn., 1857-58, ch. 161; passed March 20, 1858.)

If both refuse,  
to J. J. & C. R.  
R. Co.

**Jasper branch, from Bridgeport to state line, authorized to be constructed in Alabama, with rights, powers, and privileges of main line.**

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened*, That an act granting the right of way to the Nashville & Chattanooga Railroad Company through Jackson county, and

the privilege of constructing a bridge across Tennessee river in said county, approved January 21, 1850, be so amended that the Nashville & Chattanooga Railroad Company shall have the right to construct and operate a branch of their road from a point on the line of their road at or near Bridgeport, in Jackson county, to the Tennessee state line, in a direction to Jasper, Tenn., with all the rights, powers, and privileges pertaining to the main line, and subject to the same liabilities and restrictions. (Acts of Ala., 1859-60, No. 216.)

## CHAPTER XXIII.

## TRACY CITY BRANCH.

(SEWANEE BRANCH.)

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—On January 1, 1887, the Tennessee Coal, Iron & Railroad Company, in pursuance of a resolution of its stockholders, adopted October 12, 1886, conveyed to the Nashville, Chattanooga & St. Louis Railway, the railroad, telegraph lines, franchises, etc., of what is now known as the Tracy City branch. The road commences at a point in Franklin county, on the main line of the vendee company, known as the “V,” just west of the entrance to the tunnel under Cumberland mountains, and runs thence up the west side of the said mountain, through Sewanee, to Tracy City, a distance of about eighteen miles. The consideration paid was six hundred one thousand dollar bonds, of which number, however, one hundred were to be retained by the Nashville, Chattanooga & St. Louis Railway, and appropriated to the improvement and equipment of the road. A deed to said road, properties, franchises, etc., is registered in the register’s office of Franklin county, in book 12, pp. 501–503; in Grundy county, in book H, p. 599; in Marion county, in book Q, p. 404. Said deed is also inserted herein. See next chapter.

The road was originally built by the Sewanee Mining Company, a corporation chartered by Acts Tennessee, 1851–52, ch. 284, p. 521, sec. 7, and which charter was amended by Acts Tennessee, 1853–54, ch. 298, p. 620, so as to authorize the company “to construct a railroad or roads, with one or more tracks, to be used with steam, animal, or other power, from any point or points on the Nashville & Chattanooga Railroad to any or all the coal mine or lands now owned, or that



may hereafter be owned, by said Sewanee Mining Company, on the Cumberland mountains," etc.

After its construction, a suit was filed by Thos. Richardson against the company, in the circuit court of the United States at Nashville, Tenn., and judgment was rendered in his favor for a large amount. J. B. Clement, the United States marshal, having the writ, levied upon this railroad and other real estate of the company, to satisfy the judgment. At the sale that followed, Thomas Richardson became the purchaser of the road, franchises, etc., and a deed was duly executed to him on May 15, 1860, and registered in the register's office of Franklin county, in book Z, p. 290; in Marion county, in book H, p. 487.

Thomas Richardson conveyed the road, franchises, etc., to John Cryder, on June 19, 1860, a deed to which is registered in the register's office of Franklin county, in book 1, p. 26; in Marion county, in book H, p. 598; Grundy county, in book D, p. 531.

John Cryder, Jno. G. Dale, A. S. Colyar, A. M. Rutledge, B. F. McGee, E. F. Colyar, E. L. Best, Jno. A. L. Best, and Samuel Best, subsequently conveyed the road, franchises, etc., to the Tennessee Coal & Railroad Company, on August 31, 1866, under an agreement to pool their interests and form a new company (which agreement is incorporated in the deed). A. S. Colyar and the other conveyors joined in the deed with John Cryder, as they had acquired an interest by virtue of some judgments secured against the Sewanee Mining Company, and this deed and agreement was made as a settlement of all matters between them. The deed is registered in the register's office of Franklin county, in book 2, p. 362; in Marion county, in book I, p. 158; in Grundy county, in book E, pp. 424-432.

Subsequently, the Tennessee Coal & Railroad Company, that had in the meantime changed its name to the Tennessee Coal, Iron & Railroad Company, conveyed the road, franchises, etc., to the Nashville, Chattanooga & St. Louis Railway, as heretofore explained.

1. The Tennessee Coal & Railroad Company was chartered by Acts Tenn., 1859-60, ch. 198, p. 582, approved March 24, 1860. It was also granted certain rights in Alabama by act passed February 10, 1893.

On September 13, 1881, its charter was amended in Tennessee so as to change its name to the Tennessee Coal, Iron & Railroad Company. See notes to Inman branch, a part of Sequatchie Valley branch, herein.

2. **Legality of purchase of road.**—The purchase of this road, franchises, etc., was legal under Acts Tenn., 1871, ch. 69, which superseded the Acts of 1871, ch. 22.

**Width of right of way.**—The width of the right of way on this branch is fifty feet on each side of the center of the track, save at a point near Monteagle, described in the deed, as will fully appear from the deed to the same, which is set out in the next chapter.

For right to take more than fifty feet for right of way when necessary for railway purposes, see *Eminent Domain, Right of Way*, herein. Refer to index.

**Distance built when road purchased.**—The entire line from Tracy City to the main branch of the Nashville, Chattanooga & St. Louis Railway was constructed when the road was purchased by the latter company.

**What franchises passed under the sale.**—In addition to the other property therein conveyed, the deed specifically transferred and conveyed all the rights, franchises, etc., of the company, including the telegraph line. By Acts Tenn., 1853–54, ch. 298, p. 620, heretofore referred to as amending the charter of the Sewanee Mining Company, the said company was allowed to build the road, and for such purpose was allowed to purchase, have, and hold in fee simple, or for a term of years, any real estate. In addition, by sec. 2 of said act, it was allowed to condemn property for a right of way or for materials to build or repair the same, in a method therein set out; and by sec. 3 it was authorized to construct its road across or along any public road or water course.

## CHAPTER XXIV.

## DEED TO TRACY CITY BRANCH.

## DEED.

TENNESSEE COAL, IRON & RAILWAY COMPANY, }  
TO—*Deed.* }  
NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY. }

WHEREAS, By resolution adopted at a meeting of the stockholders of the Tennessee Coal, Iron & Railroad Company, held on the twelfth day of October, 1886, directing the president and directors of said company to sell, alien, and convey, by proper instruments, conveyances, certain properties of said company, hereinafter described, to the Nashville, Chattanooga & St. Louis Railroad, each being corporations chartered under the laws of the State of Tennessee, which, among other things, provided that the said Tennessee Coal, Iron & Railway Company would sell, and the Nashville, Chattanooga & St. Louis Railway Company would purchase, all the property hereinafter mentioned for the consideration hereinafter set out:

Now, therefore, by virtue of the power vested in us by the stockholders and directors and all other officers of the Tennessee Coal, Iron & Railroad Company aforesaid, the Tennessee Coal, Iron & Railroad Company have this day bargained and sold, and do by these present alien, confirm, and convey to the Nashville, Chattanooga & St. Louis Railway Company, its successors and assigns forever, all the railroad, beginning in Franklin county, State of Tennessee, at the point of its connection with the main track of the Nashville, Chattanooga & St. Louis Railway at a point known as the "V," just west of the entrance to the tunnel under Cumberland mountain, and running thence up the west side of said mountain to Sewanee on the top of said mountain, and thence by Monteagle to Tracy City, a distance of about eighteen miles, lying and being in the



counties of Franklin, Marion, and Grundy, together with all the roadways, tracks, superstructures, rails, sidings, switches, turnouts, walls, fences, rights of way, cross-ties, lain or on the sides, depot houses and station houses, engine house, car house, freight house, sheds, buildings and repair shops, depot, land and ground provided and used for siding, excluding what is known as the Rattlesnake branch and its switches and sidings, running from Tracy City to Rattlesnake mines, northeast from Tracy City, and including all other property of said company not excluded herein. A plan of said railroad has been prepared and mapped, and the same is here specifically referred to and adopted, and the same is made a part of this deed, and said right of way for said road is fifty feet on either side of the center of said track between its termini, <sup>Width of right of way.</sup> except at a point near Monteagle, between the fourth and fifth mile from Tracy City, viz.: From the point where Holmes' track joins the railroad on the south side to where the west boundary of Summer's track crosses the track, as indicated by a rock, and the same is shown on said map, and opposite the lands of Keith Bennett and Holmes, as shown on sides.

Also the following right of way in Tracy City: Right of way for Nashville & Chattanooga Railway in Tracy City, beginning at the southwest corner of lot No. 288, 50 feet from the center of the track; thence north  $58^{\circ} 15''$  east 332.1 feet to a stake opposite St. Clair street; thence north  $52^{\circ} 20''$  east 207.2 feet to a stake on the culverts; thence north  $45^{\circ} 45''$  east 216.7 feet to a stake; thence north  $36^{\circ} 52''$  east 105.2 feet to a cross on sand rock; thence north  $27^{\circ} 55''$  east 278.5 feet to a stake near the west side of the Tennessee Coal, Iron & Railway Company store; thence south  $64^{\circ} 13''$  east 35 feet to a stake 15 feet from the center of track; thence north  $21^{\circ} 47''$  east 55 feet to a stake 15 feet from the center of the track; thence north  $50^{\circ} .01''$  west 35 feet to a stake near the east side of store, and 50 feet from the center of track; thence north  $15^{\circ} 39''$  east 168.3 feet to a stake 5 feet past the northwest corner of the old depot, and 50 feet from the center of the track; thence north  $5^{\circ} 55''$  east 290.6 feet to a stake; thence north  $13^{\circ} 24''$  east 274.4 feet to a stake

near south line of Bersheba street; thence north 22' 39.2" east 207.6 feet to a stake; thence north 11' 53" east 161.7 feet to a stake near south line of Coke street; thence north 63' 43" west 18.2 feet to a stake 50 feet from center of track; thence north 15' 16" east 366.3 feet to a stake; thence north 9' 52" east 639.5 feet to a stake 6 feet to west of center of coke-oven track; thence north 3' 47" east 366.3 feet to a stake near the lower end of coke-oven; thence north 17' 48" east 550.1 feet to a stake at upper end of coke-oven track, west side; thence south 30' .07" east 17.3 feet to a stake on the east side of said track; thence south 16' 55" west 619.5 feet to a stake 4.5 feet east of center of coke-oven track; thence south 79' 19" east 87.5 feet to a stake 50 feet to west of center of main track; thence north 25' 21" east 255.2 feet to a stake 5 feet west of center of track; thence north 8' 37" east 575.2 feet to a stake under ———; thence north 23' 45" east 356.4 feet to stake near head of cut, and 4.5 feet to west of center of track; thence north 84' .07" east 39.4 feet to stake on bank; thence south 15' 36" west 809.8 feet to stake 7.5 feet to east of center of track; thence south 14' 46" east 195.9 feet to stake; thence south 12' 36" west 80 feet to stake; thence 75' 27" east 165 feet to stake; thence south 15' 33" west 565.1 feet to stake; thence south 39' 50" west 474.5 feet to stake 50 feet to east of center of track, passing the northwest corner of Terrill's fence at 70 feet; thence south 12' .09" west 117.3 feet to stake near the company's stable, and 50 feet to east of the center of track; thence south 18' .09" west 647.2 feet to stake in road opposite the company's store and 50 feet to east of center of track; thence south 26' 21" west 144.8 feet to a stake in the sawmill yard, and 50 feet from the center of the Nashville & Chattanooga track, crossing the Rattlesnake switch at 60 feet; thence south 53' 15" east 318.5 feet to stake in the center of the stable, branch, or creek; thence south 23' 53" west 257.9 feet to stake on the east bank of said branch, and near its junction with a small branch from under the railway; thence north 68' west 80 feet, crossing said small branch at 40 feet; thence 69' 17" west 171.7 feet to a stake at northeast corner of lot No. 36; thence west with an easterly

variation of 45" with line of said lot, 130.1 feet to a stake at the corner of said lot; thence south 57° 30' west with the variation of 340.9 feet, to stake in line of Sixth street at corner of lot No. 34.

Also all locomotives, tenders, passenger, baggage, and other cars, except engines No. 2, 4, and 5, and their equipments, and all rolling stock and equipments, all machinery, tools, implements, rails, chairs, and spikes and material, whatsoever, and all rights, privileges, franchises, and hereditaments and appurtenances, connected therewith and necessary to the proper use of said road and its franchises heretofore used in the operation of said road.

Franchises  
pass.

Also the telegraph line running from the beginning of said road, at the tunnel aforesaid, at or near the town of Cowan, in Franklin county, to Tracy city, in the county of Grundy, including posts, seal or unseal, all right of way, all wires, batteries, fixtures or appurtenances, offices and furniture, together with all the rights, privileges, and franchises, appertaining or belonging to said telegraph line.

Telegraph  
line.

To have and to hold to the said Nashville, Chattanooga & St. Louis Railway, all the property, real or personal, franchises, rights, appurtenances and privileges thereto appertaining and belonging, as hereinbefore specified, mentioned, described, or referred to, its assigns, vendors, or successors, forever. And the Tennessee Coal, Iron & Railway Company covenants with the Nashville, Chattanooga & St. Louis Railway Company, its assigns, vendors, and successors, that it is lawfully seized and possessed of all of said property, and that it has a good right to convey the same in fee simple and absolutely, as set out herein, and that the same is free from all liens, mortgages, and other incumbrances whatever, in every part and in every respect, and the said Tennessee Coal, Iron & Railroad Company binds itself to the Nashville, Chattanooga & St. Louis Railway, its assigns, vendors, and successors, to forever warrant and defend the title to each and every part and parcel of the property, real or personal, hereinbefore described, referred to, or mentioned as passing by this deed.



In consideration of the premises and conveyances hereinbefore had and made, the Nashville, Chattanooga & St. Louis Railway has executed the following described six per cent. per annum coupon bonds of the Nashville, Chattanooga & St. Louis Railway, being six hundred in number, each one thousand dollars, and secured by first lien upon the road, property, and franchise, hereinbefore described, each dated January 1, 1887, with coupon due January 1, 1888, and all subsequent coupons attached, both principal and interest, payable in lawful money of the United States, in New York city, coupons payable January and July for each successive year, of which the Tennessee Coal, Iron & Railway Company have received the following five hundred bonds, and the Nashville, Chattanooga & St. Louis Railway may sell the other hundred, appropriate the proceeds to the improvement and equipment of said road and property: Twenty bonds of \$1,000 each, numbered from 1 to 20, and due January 1, 1892; twenty of \$1,000 each, numbered from 21 to 40, and due January 1, 1893; twenty bonds of \$1,000 each, numbered from 41 to 60, and due January 1, 1894; twenty bonds of \$1,000 each, numbered from 61 to 80, and due January 1, 1895; twenty bonds of \$1,000 each, numbered from 81 to 100, and due January 1, 1896; twenty bonds of \$1,000 each, numbered from 101 to 120, and due January 1, 1897; twenty bonds of \$1,000 each, numbered from 121 to 140, and due January 1, 1898; twenty bonds of \$1,000 each, numbered from 141 to 160, and due January 1, 1899; twenty bonds of \$1,000 each, numbered from 161 to 180, and due January 1, 1900; twenty bonds of \$1,000 each, numbered from 181 to 200, and due January 1, 1901; twenty bonds of \$1,000 each, numbered from 201 to 220, and due January 1, 1902; twenty bonds of \$1,000 each, numbered from 221 to 240, and due January 1, 1903; twenty bonds of \$1,000 each, numbered from 241 to 260, and due January 1, 1904; twenty bonds of \$1,000 each, numbered from 261 to 280, due January 1, 1905; twenty bonds of \$1,000 each, numbered from 281 to 300, and due January 1, 1906; twenty bonds of \$1,000 each, numbered from 301 to 320, due January 1, 1907; twenty bonds of \$1,000

each, numbered from 321 to 340, due January 1, 1908; twenty bonds of \$1,000 each, numbered from 341 to 360, due January 1, 1909; twenty bonds of \$1,000 each, numbered from 361 to 380, due January 1, 1910; twenty bonds of \$1,000 each, numbered from 381 to 400, due January 1, 1911; twenty bonds of \$1,000 each, numbered from 401 to 420, and due January 1, 1912; twenty bonds of \$1,000 each, numbered from 421 to 440, due January 1, 1913; twenty bonds of \$1,000 each, numbered from 441 to 460, due January 1, 1914; twenty bonds of \$1,000 each, numbered from 461 to 480, and due January 1, 1915; twenty bonds of \$1,000 each, numbered from 481 to 500, and due January 1, 1916; and one hundred of said bonds are numbered from 501 to 600 inclusive, and due January 1, 1917. This January 1, 1887.

TENNESSEE COAL, IRON & RAILROAD COMPANY,

[SEAL.]

By NATHANIEL BAXTER, JR., *President*.

By G. W. McCORMACK, *Secretary pro tempore*.

The above deed was properly acknowledged and registered in the register's office of Franklin county, in book 12, p. 501-3; in Grundy county, in book H, p. 599; in Marion county, in book Q, p. 404.

## CHAPTER XXV.

## SHELBYVILLE BRANCH.

**How acquired by Nashville, Chattanooga & St. Louis Railway.**

—What is known as the Shelbyville branch—that is, the branch from Wartrace to Shelbyville—was built by the Nashville, Chattanooga & St. Louis Railway under and pursuant to an act of the legislature of the State of Tennessee, 1849–50, ch. 266, sec. 3, passed January 19, 1850. The act referred to provided, among other things, that “the Shelbyville branch, and such other branches of the Nashville & Chattanooga road as may be made, shall have all the rights and privileges, and shall be placed in all respects on the same footing with the Nashville & Chattanooga road.”

The road was built about ——— day of ———, 18—.

**Width of right of way.**—Inasmuch as the above act conferred upon this branch all the rights and privileges, and placed it in all respects upon the same footing with the Nashville & Chattanooga road, its width of right of way must now be determined by the provisions of secs. 24 and 25 of the charter of the Nashville, Chattanooga & St. Louis Railway, which give one hundred feet on either side of the center of the road, in the absence of any contract with the original landowner to the contrary. For charter of Nashville, Chattanooga & St. Louis Railway, see ch. 1, herein.

For a general discussion of this and kindred subjects, together with the right and method of taking more than two hundred feet, when necessary, for railroad purposes, see *Eminent Domain, Right of Way*, herein. Refer to index.



## CHAPTER XXVI.

## TENNESSEE &amp; COOSA RAILROAD COMPANY.

## [GADSDEN BRANCH.]

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—On April 6, 1891, the Tennessee & Coosa Railroad Company, in pursuance of the respective resolutions of its directors and stockholders, passed in the city of Huntsville, Alabama, on the thirty-first day of March, 1891, sold its road, property, *franchises*, etc., to the Nashville, Chattanooga & St. Louis Railway. The consideration paid was the cancellation of a debt of over four hundred thousand dollars, due by the said Tennessee & Coosa Railroad Company to the said Nashville, Chattanooga & St. Louis Railway; the further cancellation of one hundred and five thousand dollars of the first and only mortgage bonds of the Tennessee & Coosa Railroad Company, which bonds were held and owned by the Nashville, Chattanooga & St. Louis Railway; and the agreement on the part of the said Nashville, Chattanooga & St. Louis Railway that it would pay to each stockholder of said vendor company the par value of his stock on surrender of the certificate thereof, and complete the line of road to a point at or near Gunter's landing, on the Tennessee river, and thence across said river to some point on its line of railroad north of said river, so as to form a continuous line of road from Gadsden, Alabama, to Nashville, Tennessee. The deed of conveyance is registered in the judge of probate court of Marshall county, in book S, pp. 277-289; in Etowah county, in book 31, p. 366. Said deed is also set out herein in next chapter.

1. **Previous conveyances.**—A deed had previously been executed to the road, franchises, etc., by the said Tennessee & Coosa Railroad Company, which deed was registered in the judge of probate court of Marshall county, in book S, pp. 236-239, and in Etowah county, in book R, pp. 304-308. This deed was corrected and supplanted, however, by the one referred to above.

2. The road has been completed from Gadsden to Huntsville, thus forming a continuous line, with the Huntsville & Elora branch and the main line, to Nashville, as provided for in the deed.

3. **Legality of the sale.**—There was nothing in the charter of the Tennessee & Coosa Railroad Company authorizing it to *sell* its road, but by Acts Alabama, 1890–91, p. 568, which amended § 1586 of the code, the authority was granted. See, also, Acts Alabama, 1890–91, p. 1086; Acts Alabama, 1886–87, p. 63. The Nashville, Chattanooga & St. Louis Railway had the right to *purchase* under Acts Tennessee, 1871, ch. 69; Code Tennessee (M. & V.), § 1250; Shannon's, § 1509.

**What franchises passed under this sale.**—In addition to the road, property, right of way, etc., therein conveyed, the deed specifically transferred all rights, privileges, and *franchises* of the company. For an enumeration of the same, see the charter of the Tennessee & Coosa Railroad Company further on in this chapter.

**Additional franchises.**—In addition to the franchises that passed to the Nashville, Chattanooga & St. Louis Railway by virtue of its purchase of the Tennessee & Coosa Railroad, the legislature of Alabama, by Acts 1890–1, p. 154, approved December 10, 1890, conferred upon the Nashville, Chattanooga & St. Louis Railway the power to construct and operate its road, or a branch thereof, in and through the counties of Madison, Marshall, and Etowah, from Huntsville to Attalla or Gadsden, with all the rights, privileges, and immunities not in conflict with the constitution of the State of Alabama, and subject to such restrictions as are granted to and imposed upon the said Nashville, Chattanooga & St. Louis Railway by the act or acts chartering the same. For franchises, etc., of Nashville, Chattanooga & St. Louis Railway charter, see ch. 1, herein. This was a valuable franchise, and will now doubtless control in all cases.

**Distance road built when purchased.**—Only about thirty miles of road, commencing at Gadsden and extending in the direction of the Tennessee river, had been built when purchased by the Nashville, Chattanooga & St. Louis Railway. Under and by virtue of the franchises acquired in the sale, however, and by Acts Ala., 1890–1, p. 154, above referred to, the Nashville, Chattanooga & St. Louis Railway has since constructed the road to Huntsville.

The road from Huntsville to the Tennessee state line in the direction of Elora, was constructed under the charter of the Huntsville & Elora Railroad Company. See charter of that road on p. 214, herein, which will also explain how the road from that point to Elora, and from there through Winchester to the main line, was built.

**Width of right of way.**—It is one of the peculiarities of this charter that no power was granted in it to *condemn* a right of way. The company had to rely solely upon its *purchasing*

power, save where the landowner was an infant, nonresident, or *non compos mentis*. In the latter cases a jury was allowed to assess the damages. Moreover, there is no clause in the charter or amendments thereto providing for a *width* of right of way in the event no contract was entered into with the original landowner, or in the event no assessment of damages was had, nor does the *deed* to the road provide for any specified width. The deed transfers the "right of way" but does not designate what its width is. Under the circumstances the width along the line *actually constructed* when the purchase was made at each point will depend upon the number of feet acquired by the Tennessee & Coosa Railroad Company, and to determine which reference must be had in each instance to the records on file in the respective counties through which the road runs. It appears, however, from the case of *East Alabama Railroad Company v. Tennessee & Coosa Railroad Company*, decided in 78 Ala., 274, that the width of right of way along that part actually constructed when the Nashville, Chattanooga & St. Louis Railway purchased the road, franchises, etc., was one hundred feet. See, also, 75 Ala., 516; 73 Ala., 426; 68 Ala., 383; 64 Ala., 108.

As to that part of the road built by the Nashville, Chattanooga & St. Louis Railway from Huntsville to the old terminus of the Tennessee & Coosa Railroad, however, the width of the right of way will be controlled by the provisions of sections 24 and 25 of the charter of the Nashville, Chattanooga & St. Louis Railway, as by Acts Ala., 1890-91, p. 154, above referred to, all the rights, privileges, franchises, etc., of that charter were extended over the line of this road. This being so, the width of right of way over this part will be one hundred feet on each side of the center of the road, where the owner *fails to apply in time for assessment of value*, in the absence of any contract to the contrary with the landowner. See charter of Nashville, Chattanooga & St. Louis Railway in chapter 1, herein.

For right to take more than one hundred feet on each side, when necessary for railroad purposes, see *Eminent Domain, Right of Way*, herein. Refer to index.



**ORIGINAL CHARTER OF TENNESSEE & COOSA RAILROAD COMPANY.**

[Acts Ala., 1844-5, No. 220, p. 170.]

**Preamble.**—WHEREAS, A connection by railroad of the navigable waters of the Tennessee with those of the Coosa river is a project greatly desired by the citizens of a large portion of the State of Alabama; and,

WHEREAS, It would develop its resources, bind together sections now remote, and tend generally to the advancement and the prosperity of the state; therefore,

**SECTION 1. Commissioners, books opened, subscriptions.**—*Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened, That B. M. Lowe, George Cox, George Steele, William Brandon, George P. Burn, William J. Mastin, William Echols, John Reede, Rodah Horton, John W. Otey, William McDonald, George Russell, Fleming Jordan, William Ront, and John Robinson, of Madison county; Charles Roach, Moses Jones, William M. King, and John Hudson, of Jackson county; Lew Wyth, Simson Nichols, Albert Henry, and Allen Lovelace, of Marshall county; Simpson Newman, and Jacob T. Bradford; of DeKalb county; and George Hughes, of Cherokee county, be, and they are hereby, appointed commissioners, any thirteen of whom shall be competent to act, and do all business necessary to be done, by virtue of this act of incorporation; and they shall open books of subscription for the capital stock of the Tennessee & Coosa Railroad Company, at such time and places, and with such notice as they may think proper; Provided, The same be not less than thirty days.*

**SEC. 2. Capital stock, value of shares, increase of capital.**—*And be it further enacted, That the capital stock of said railroad company may be five hundred thousand dollars, in shares of one hundred dollars each, with the privilege of increasing one-third, should said increase be found necessary for its construction and future management.*

**SEC. 3. Termini, route.**—*And be it further enacted, That said railroad shall extend from some point at or near Gunter's land-*

ing, upon the Tennessee river, to the most eligible point on the Coosa river, between the base of the Lookout mountain and Ten Island Shoals, and shall be located with a view to the extension at some future day, to some point on the Alabama river.

**Termini changed; may extend road to Tennessee line, and to Gadsden, etc.**—By Acts Ala., 1872-3, p. 422, the above section was amended so as to read as follows: "Said railroad shall extend from some point at or near Gunter's landing, on the Tennessee river, to a point to be selected by said company, or their successors, on the boundary line between the states of Tennessee and Alabama, with a view to its further extension in a northern or northwestern direction, as said company may determine, and from said point at or near Gunter's landing, on said Tennessee river, to some point at or near the towns of Attalla or Gadsden, in Etowah county, thence by way of the cities of Talladega and Wetumpka to the city of Montgomery, on the Alabama river; *Provided*, That the provisions of this act shall in nowise impair or affect any contract or agreement heretofore made by the said Tennessee & Coosa Railroad Company with the East Alabama & Cincinnati Railroad Company." See act itself, which contains same conditions, in next chapter.

**SEC. 4. Incorporation, name, general powers.**—*And be it further enacted*, That as soon as fifty thousand dollars shall have been subscribed to the capital stock of said company, the subscribers of said stock, their successors and assignees, shall be, and they are hereby, declared to be incorporated into a company by the name of the Tennessee & Coosa Railroad Company; and by that name shall be capable in law of purchasing, holding, leasing, selling and conveying, real, personal, and mixed property, so far as shall be necessary for the purposes of this incorporation; and by said incorporated name may sue and be sued, plead and be impleaded, answer and be answered unto in any court of law or equity in this state or elsewhere; and to have and use a common seal, and the same to alter or amend at pleasure: to pass such by-laws, rules, and ordinances for the good government of said corporation as to them may seem proper; and generally to do all things to carry into effect fully and completely the objects of this act.

**SEC. 5. Election of directors and president, scale of voting, proxies.**—*And be it further enacted*, That as soon as fifty thousand dollars shall have been subscribed, the commissioners, hereby appointed, shall call a general meeting of the subscribers at such time and place as they may appoint; and, at such meeting, the said subscribers, or a majority of them in value, shall

elect nine directors, by ballot, to manage the affairs of said company; and the commissioners, as aforesaid, or any three or more of them, shall be judges of said first election of directors; and the directors thus chosen shall elect, among themselves, the president of said company, and allow him such compensation as they may think proper; and on all occasions wherein a vote of stockholders shall be necessary to be taken, each stockholder shall be allowed one vote for every share owned by him or her; and any stockholder may depute any other person to vote and act for him or her as his or her proxy.

**SEC. 6. Annual elections; powers of and removal of directors; vacancies, how filled.**—*Be it further enacted*, That the president and directors of said company shall be chosen annually by the stockholders of said company; and if any vacancy shall occur by death, resignation, or otherwise, of any president or director before the year for which they were elected shall have expired, such vacancy shall be filled by the president and directors, or a majority of them; and that the president and directors shall hold their office until their successors are chosen and qualified, shall have power to call meetings of stockholders at any time, and a majority of the stockholders shall have power to remove the president or any director, and to fill all vacancies occasioned by removal, at pleasure.

**Time of holding election of directors changed.**—By Acts of Ala., 1866-7, p. 163, No. 183, this section was amended so as to change the time of holding the election of president and directors from the twenty-second of November to the first Monday in January, and, in addition, legalized all acts done by directors from November 22, 1866, to the first Monday in January, 1867.

**SEC. 7. Powers of directors, mortgages.**—*Be it further enacted*, That said president and directors, or a majority of them, may appoint all such officers, engineers, agents, or servants, whatsoever, as they may deem necessary to carry on the business of said company, and may dismiss them at pleasure; a majority of them shall determine the compensation of all officers, engineers, and servants of said company; shall have power to pass all by-laws which they may deem necessary and proper for exercising all the powers vested in this company for



carrying into effect the objects of this act; *Provided only*, That such by-laws shall not be contrary to the laws of this state or of the United States; and said president and directors, or a majority of them, are empowered to borrow money to carry into effect the object of this act, to issue certificates or other evidences of such loan, and to pledge the property of said company for the payment of same, with interest.

By Acts Ala., 1857-8, No. 295, p. 310, the president and directors of this company were required to make a report on the fifteenth day of December, 1857, and every six months thereafter, to the governor of the state, showing the manner in which it had used the money received under the provisions of an act entitled "An act to appropriate the unappropriated part of the two per cent. fund, and a portion of the three per cent. fund," approved February 4, 1850. See act itself for character of report, which act is set out in next chapter.

**SEC. 8. Installments, stock may be sold for.**--*And be it further enacted*, That the said president and directors shall have power to require the stockholders of said company to pay such installments on their respective shares of stock in said company, and at such times as they may think best for the interest of said company; and, upon the failure or refusal of any stockholder to pay the installment required on his, her, or their stock, in pursuance of any call made by said president and directors as aforesaid, said president and directors may, upon giving thirty days' notice, proceed to sell, at public sale, the share or shares of said stock owned by such stockholder, or such part as they may think proper, to the highest bidder, and if, upon the sale of the shares of said stock owned by said defaulting stockholder, said stock should be sold for less than the amount due upon installments as above mentioned, said stockholder shall be liable to pay to the said company the deficiency, in manner and form hereafter specified.

See notes to sec. 9 of this charter.

**SEC. 9. Installments, stockholders may be sued for, how.**—*And be it further enacted*, That upon the failure or refusal of any stockholder to pay any installment called for or demanded by the president and directors of said company; or if, upon the sale of said shares, as before specified, they shall be sold for less than the amount due upon the installments as above men-

tioned, the president and directors, upon giving twenty days' notice to said defaulting stockholder, may proceed by their attorney to move the circuit court of the county in which said stockholder may reside for judgment against said stockholder for the amount called for by the president and directors of said company, or, as the case may be, for any deficiency that may occur in the sale of said stock as above specified; and said court is hereby authorized and empowered and required to render judgment against said defaulting stockholder at the same term of the court at which said motion is made, which judgment, so given, shall be a lien on the real and personal property of said stockholder, and execution shall issue, as upon other judgments, for the amount of said judgment and cost, and all notices hereby required to be given to any defaulting stockholder shall be issued by and in the name of the secretary to the board of directors, and served by the sheriff of the county in which the stockholder may reside, and shall be returned to the office of the clerk of the court as in cases of common writs, and the sheriff shall be entitled to one dollar for serving said notice, which, with all costs that may accrue on said proceedings shall be paid by the party against whom judgment may be rendered.

1. **Charter amended.**—By Acts Ala., 1855-56, No. 316, p. 322, the above section was amended so as to allow the company to bring suit for installments due upon subscriptions for stock before any justice of the peace, when amount due at time of suit is less than fifty dollars.

2. **Same.**—The same act provided that in such suits no one should be excluded from being a witness by reason of being a stockholder. See act itself in next chapter.

**SEC. 10. Land for right of way, how acquired.**—*And be it further enacted,* That the president and directors of said company are hereby authorized to contract for and receive conveyances of land, stone, timber, and wood, which may be necessary or required in the construction of said railroad; and when the owner and company cannot agree upon the price, or when the owner is an infant, nonresident, or *non compos mentis*, then it shall be lawful for the president and directors of said company to apply to the sheriff of the county in which said lands or other property may be situated, who shall summon a jury

of seven disinterested freeholders, a majority of whom shall be authorized to assess the damages, and return their award or judgment to the next term of the circuit court for the county in which said land or other property may be situated, which shall be entered by the clerk as the judgment of the court; and execution may issue thereupon for the amount of said judgment and costs; *Provided always*, That if either party shall, upon the return thereof, be dissatisfied, they may, upon filing bond, with good and sufficient security, in such sum as the court may order, be allowed an appeal to the next term of the circuit court, where said case shall stand for trial *de novo*, provided thirty days' notice shall have been given to the opposite party, issued by the clerk of the court, and served by the sheriff of the county.

**Land for right of way, how acquired.**—It will be noticed, as one of the peculiarities of this charter, that no power was granted to *condemn* a right of way. The company had to rely solely upon its *purchasing* power, save when the landowner was an infant, nonresident, or *non compos mentis*. In the latter mentioned cases a jury was allowed to assess the damages. There is no clause in the charter or amendments providing for a *width* of right of way in the event no contract was entered into with the original landowner, or in the event no assessment of damages was had.

By Acts Ala., 1890-91, p. 154, approved December 10, 1890, however, the Nashville, Chattanooga & St. Louis Railway was granted the power to construct and operate its road, or any branch thereof, in and through the counties of Madison, Marshall, and Etowah, from Huntsville to Attalla or Gadsden, with all the rights, privileges, and immunities not in conflict with the constitution of Alabama, as were granted to it in the act or acts chartering the same. Sections 24 and 25 of the charter of the Nashville, Chattanooga & St. Louis Railway provide for a method of condemnation. See ch. 1, herein. This would hold good over that part of the road from Huntsville to the terminus of the old Tennessee & Coosa Railroad, which latter line [from Huntsville to said terminus] was built by the Nashville, Chattanooga & St. Louis Railway after the above Acts of 1890-91, p. 154, had been passed, and would also possibly hold good over the entire line to Gadsden.

**Width of right of way.**—See 75 Ala., 516; 73 *Ib.*, 426; 68 *Ib.*, 383; 64 *Ib.*, 108. See, also, first part of this chapter.

**SEC. 11. Oath of jury.**—*And be it further enacted*, That the jurors trying such case shall take the following oath, which oath the sheriff is hereby authorized to administer: "You, and each of you, do swear (or affirm, as the case may be), that you will well and truly try the case now pending and submitted to your decision, between A B, complainants, and the president and directors of the Tennessee & Coosa Railroad Company,



defendants; and that you will take into consideration the advantages and value which the construction of the railroad may give to lands or other property, as well as the injury said lands or other property may sustain by its construction through, or near which it may be constructed: So help you God."

**SEC. 12. Title to land acquired, work not to be delayed.**—*And be it further enacted*, That the said lands or other property, when so condemned and estimated as aforesaid, shall inure to, and become the property of said company forever, upon the payment, by said company, of the amount assessed by said jury to the party claiming damages on account of the construction of said road through said land, or for such other property; *And provided further*, That said work shall in no-wise be delayed on account of proceedings had as aforesaid.

**SEC. 13. Injury to road, penalty.**—*And be it further enacted*, That in case any person shall willfully injure or obstruct, in any degree, the said road or roads, he shall forfeit and pay to the president and directors of said company three times the amount of all damages they may sustain in consequence thereof; to be sued for and recovered in the same manner as provided by law for individuals in like cases. And on complaint made to any magistrate within whose jurisdiction such offense shall be committed, it shall be the duty of such magistrate to bind the person or persons so offending, with sufficient security, for his or their good behavior for a period of not less than one year; and such offender shall also be subjected to indictment, and shall be sentenced, at the discretion of the court, to be imprisoned not less than three nor more than six months.

**SEC. 14. Public roads not to be obstructed.**—*And be it further enacted*, That in the construction of said railroad the president and directors of said company shall not, in any way or manner, obstruct any public road now established; but shall provide convenient passages to travel over said road.

**SEC. 15. Subscriptions may be paid in what.**—*And be it further enacted*, That payments of the subscription to the stock in said railroad may be made in the materials, labor, provisions, and all and everything necessary for the construction of said

road, which the board of directors, at their discretion, may deem it expedient to accept.

**SEC. 16. Tolls; net profits not to exceed what.**—*And be it further enacted*, That after the completion of said road, or any part thereof, the said president and directors may lay and collect tolls from all persons, property, merchandise, and other commodity transported thereon; *Provided*, The net profits of said road shall never exceed twenty-five per cent. per annum.

By Acts Ala., 1869-70, p. 290, No. 245, sec. 2, approved March 2, 1870, the company was required to transport passengers at a rate not to exceed four cents per mile, and local freight at a rate not to exceed 25 per cent. higher than is charged for through freight. See act itself in next chapter.

**SEC. 17. Other roads may cross this.**—*And be it further enacted*, That the general assembly reserve the right and power to authorize the construction of any railroad to cross the one authorized by this act, at any point the general assembly may think proper.

By Acts Ala., 1857-8, No. 152, p. 162, sec. 2, the Winchester & Alabama Railroad was allowed to connect with this railroad at or near some convenient point near the Davidson Hollow, but this was never done, as the said road was never extended into Alabama.

**SEC. 18. Banking and issuing circulating paper prohibited.**—*And be it further enacted*, That nothing in this act shall be so construed as to confer upon said company any right to exercise the power of a banking company or to issue any description of paper or evidences of debt intended as circulation. (Acts Ala., 1844-5, No. 220, p. 170; approved January 16, 1844.)

## CHAPTER XXVII.

*DEED TO AND ACTS RELATING TO TENNESSEE & COOSA  
RAILROAD.***DEED.**

This indenture witnesseth that, whereas, on the thirty-first of March, 1891, the following contract of conveyance between the Tennessee & Coosa Railroad, party of the first part, and the Nashville, Chattanooga & St. Louis Railway, party of the second part, was made, to wit:

This indenture, made and entered into on this, the thirty-first day of March, 1891, by and between the Tennessee & Coosa Railroad Company, a corporation organized and existing under the laws of the State of Alabama, party of the first part, and the Nashville, Chattanooga & St. Louis Railway, a corporation organized and existing under the laws of the State of Tennessee, party of the second party, witnesseth that,

WHEREAS, Said party of the first part is justly indebted to the party of the second part in a large sum of money, exceeding the sum of four hundred thousand dollars, for money by said party of the second part paid, laid out, and expended by said party of the second part in satisfaction of debts and liabilities of said party of the first part, and in the construction and equipment of the line of road of the said party of the first part from the city of Gadsden, in the county of Etowah, to a point on the located line of said road near the city of Guntersville, in the county of Marshall, in the State of Alabama; and,

WHEREAS, Said party of the second part is the owner of one hundred and five (105) of the first and only mortgage bonds of this company, each for the payment of one thousand dollars, which bonds, with the semiannual interest thereon for the years 1888, 1889, and 1890 are unpaid; and,



WHEREAS, At a meeting of the board of directors of the said party of the first part, convened in the city of Huntsville, in the State of Alabama, on the thirty-first day of March, 1891, of which meeting each director had due and legal notice, a preamble and resolutions, in the words following, were adopted by said board of directors:

“WHEREAS, This company is justly indebted to the Nashville, Chattanooga and St. Louis Railway in a sum exceeding four hundred thousand dollars, which sum has been expended in the construction and equipment of the line of road of this company from the city of Gadsden, in the county of Etowah, to a point near the city of Guntersville, in the county of Marshall, in the State of Alabama, and in the payment of debts and liabilities of this company; and,

“WHEREAS, Said Nashville, Chattanooga & St. Louis Railway was induced to aid this company by the expenditure and advance of said sum of money with a view and for the purpose of connecting a line of road of this company to and with the line of road of said Nashville, Chattanooga & St. Louis Railway north of the Tennessee river, at some point on such line either in the county of Madison or in the county of Jackson in this state, so that a continuous line of railroad would be constructed and operated to and from said city of Gadsden to such point on the lines of railroad of said Nashville, Chattanooga & St. Louis Railway north of the Tennessee river as may be selected, and thence to Chattanooga and Nashville in the State of Tennessee; and,

“WHEREAS, Said Nashville, Chattanooga & St. Louis Railway is the holder and owner of one hundred and five (105) of the first and only mortgage bonds of this company, each for the payment of one thousand dollars, and which, with the semianual interest thereon for the years 1888, 1889, and 1890, are unpaid; and,

“WHEREAS, This company has not the ability to pay the said debt and to continue the construction of its said line of road from the city of Gadsden to a point at or near Gunter's landing on the Tennessee river, and thence across said river, con-

neeting with other lines of railroad, without the borrowing of money and contracting a large indebtedness, which is not believed to be to the interest of the stockholders; therefore,

“1. *Be it resolved*, That it is expedient to the interest of this company and to the best interest of the stockholders, to make sale to said Nashville, Chattanooga & St. Louis Railway of all the property, rights of property, real and personal, and of all the rights, privileges, and franchises of this company, in payment of the said indebtedness of this company, the said Nashville, Chattanooga & St. Louis Railway stipulating and covenanting to assume and discharge any and all other debts and liabilities of this company, and to pay each shareholder of the company the par value of his stock; and further stipulating to continue and to complete the construction of the line of road of this company, now in the course of construction, to a point at or near Gunter's landing on the Tennessee river, and thence across said river to a point on its line of railroad aforesaid;

“2. *Be it further resolved*, That the foregoing preamble and resolution shall be submitted to a meeting of the stockholders of this company, called for the purpose of considering the same, of which meeting due and legal notice shall be given said stockholders: and, if the said preamble and resolution be approved by a majority of said stockholders, and the stockholders of said Nashville, Chattanooga & St. Louis Railway, and the board of directors thereof shall assent to make the purchase on the terms and conditions expressed in said resolution, the board of directors of this company are authorized and empowered to cause all necessary and proper conveyances to said Nashville, Chattanooga & St. Louis Railway to be made and executed by this company;” and,

WHEREAS, Subsequently said preamble and resolutions were submitted to a meeting of the stockholders of said party of the first part. convened in the city of Huntsville aforesaid, on the thirty-first day of March, 1891, for the purpose of considering the same, of which meeting, and the purpose for which it was called, due and legal notice was given to each and every stockholder, saving and excepting W. C. Waddle, A. M. Davenport,

and H. W. Pickens, who own, in the aggregate, twelve shares, and whose residence were, and are, unknown; and,

WHEREAS, After considering said resolutions, said stockholders, at said meeting, adopted a resolution approving the said preamble and resolutions, and instructing the board of directors of the party of the first part to make the said sale and all the necessary and proper conveyances to carry the same into effect; and,

WHEREAS, The said stockholders and the board of directors of the said party of the second party have considered the said preamble and resolutions, and have approved the same, and assented to the said sale on the terms and conditions in said preamble and resolutions expressed:

Now this indenture further witnesseth: That for and in consideration of the stipulations and covenants of said party of the second part hereinafter expressed, and for and in consideration of the satisfaction of the debts and liabilities of said party of the first part to said party of the second part hereinbefore mentioned, said party of the first part hath given, granted, bargained and sold, and conveyed, and by these presents doth give, grant, bargain, sell, and convey unto said party of the second part, its successors and assigns, forever, all the line of said road of said party of the first part now constructed, extending from said city of Gadsden, in all about thirty miles in length; and also the right or rights of way therefor, roadbed, superstructure, and all lands and depot grounds, station houses, depots, tools, materials, equipments, and rolling stock, and all other property, real or personal, appertaining to said road and the use thereof, now owned or possessed by said party of the first part, and also including any and all other property, real or personal, and all rights of property now had or possessed by said party of the first part, and all **Franchises** the rights, privileges, and franchises which are held and **PASS.** possessed by said party of the first part.

To have and to hold the above mentioned and hereby granted property and rights of property, rights, privileges, and franchises, unto the said party of the second part, its successors and



assigns, forever; and said party of the second part, for itself, its successors and assigns, doth hereby stipulate and covenant to and with said party of the first part for and in consideration of the premises, that it will pay and satisfy all debts and liabilities now existing against said party of the first part; and, further, that it, the said party of the second part, its successors and assigns, will pay to each stockholder of the said party of the first part the par value of his stock on the surrender and cancellation of his certificate or certificates of stock.

And, further, that it, said party of the second part, its successors and assigns, will continue and complete the construction of the line of railroad hereby granted and conveyed to a point at or near Gunter's landing on the Tennessee river, and thence across said river to some point on its said line of railroad north of said river, so as to form the continuous line of road in the said preamble and resolution contemplated and intended.

In witness whereof, the parties hereto have caused these presents to be signed by their respective presidents and their corporate seals to be hereto affixed and attested by their respective secretaries the day and year above written.

THE TENNESSEE & COOSA RAILROAD COMPANY,

By J. W. THOMAS, *President*.

The Tennessee & Coosa Railroad Company has no seal.

Attest: J. H. AMBROSE, *Secretary*.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

[SEAL.] By J. W. THOMAS, *President*.

Attest: J. H. AMBROSE, *Secretary*.

AND, WHEREAS, Upon submission of this contract of conveyance to the directors of the Nashville, Chattanooga & St. Louis Railway, at a meeting held at the office of said railway on the fourth day of April, 1891, the following resolution was adopted:

“WHEREAS, Upon submission to the board of directors of the Nashville, Chattanooga & St. Louis Railway of the deed and contract of conveyance of the Tennessee & Coosa Railroad

Company of its properties, franchises, etc., it was discovered that by oversight the following clauses were inserted in the conveyance: 'The said Nashville, Chattanooga & St. Louis Railway stipulating and covenanting to assume and discharge any and all other debts and liabilities of this company, and to pay each shareholder of the company the par value of his stock, and for and in consideration of the satisfaction of the debts and liabilities of said party of the first part to said party of the second part, hereinbefore mentioned; and said party of the second part, for itself, its successors and assigns, doth hereby stipulate and covenant to and with said party of the first part, for and in consideration of the premises, that it will pay and satisfy all the debts and liabilities now existing against said party of the first part;' and,

"WHEREAS, This formed no part of the consideration passing between this company and the Tennessee & Coosa Railroad Company,

*"Be it resolved by the Board of Directors of the Nashville, Chattanooga & St. Louis Railway, That said deed and contract of conveyance be, and it is hereby, approved and accepted, with the exception of said above mentioned clauses, and the president of this company is directed to execute with the Tennessee & Coosa Railroad Company an agreement by which said deed and contract of conveyance shall be so amended as to eliminate said clauses;"* and,

WHEREAS, At a meeting of the board of directors of the Tennessee & Coosa Railroad Company, held at Huntsville, Ala., on the sixth day of April, 1891, the said contract of conveyance having been submitted to said board, the following resolutions were adopted:

"WHEREAS, Upon submission to the board of directors of the Tennessee & Coosa Railroad Company of the deed and contract of conveyance of the Tennessee & Coosa Railroad Company of its properties, franchises, etc., to the Nashville, Chattanooga & St. Louis Railway, it was discovered that by oversight the following clauses were inserted in the conveyance: 'The said Nashville, Chattanooga & St. Louis Railway stipulat-

ing and covenanting to assume and discharge any and all other debts and liabilities of this company, and to pay each shareholder of the company the par value of his stock, and for and in consideration of the satisfaction of the debts and liabilities of said party of the first part to said party of the second part hereinbefore mentioned; and said party of the second part, for itself, its successors and assigns, doth hereby stipulate and covenant to and with said party of the first part, for and in consideration of the premises, that it will pay and satisfy all the debts and liabilities now existing against said party of the first part; and,

“WHEREAS, This formed no part of the consideration passing between this company and the Nashville, Chattanooga & St. Louis Railway:

“*Be it resolved by the Board of Directors of the Tennessee & Coosa Railroad Company*, That said deed and contract of conveyance be, and it is hereby, approved and accepted, with the exception of said above mentioned clauses, and the president of this company is directed to execute with the Nashville, Chattanooga & St. Louis Railway an agreement, by which said deed and contract of conveyance shall be so amended as to eliminate said clauses.”

NOW, THEREFORE, In accordance with the resolution of said boards, and with the original understanding, contract, and agreement between the two companies, it is agreed by the parties hereto that said deed and contract of conveyance or indenture, executed on the thirty-first day of March, 1891, be, and the same is hereby, amended so as to read as follows:

This indenture, made and entered into this, the thirty-first day of March, eighteen hundred and ninety-one (1891), by and between the Tennessee & Coosa Railroad Company, a corporation organized and existing under the laws of the State of Alabama, party of the first part, and the Nashville, Chattanooga & St. Louis Railway, a corporation organized and existing under the laws of the State of Tennessee, party of the second part, witnesseth; that—

WHEREAS, Said party of the first part is justly indebted to



said party of the second part in a large sum of money, exceeding the sum of four hundred thousand dollars, for money by said party of the second part paid, laid out, and expended by said party of the second part in satisfaction of debts and liabilities of the said party of the first part, and in the construction and equipment of the line of railroad of said party of the first part from the city of Gadsden, in the county of Etowah, to a point on the located line of said railroad near the city of Guntersville, in the county of Marshall, in the State of Alabama; and,

WHEREAS, Said party of the second part is the owner and holder of one hundred and five of the first and only mortgage bonds of this company, each for the payment of one thousand dollars, which bonds, with the semiannual interest thereon, for the years 1888, 1889, and 1890, are unpaid: and,

WHEREAS, At a meeting of the board of directors of the said party of the first part, convened in the city of Huntsville, in the State of Alabama, on the thirty-first day of March, 1891, of which meeting each director had due and legal notice, a preamble and resolution, in words following, were adopted by said board of directors;

WHEREAS, This company is justly indebted to the Nashville, Chattanooga & St. Louis Railway, in a sum exceeding four hundred thousand dollars, which sum has been expended in the construction and equipment of the line of road of this company, from the city of Gadsden, in the county of Etowah, to a point near the city of Guntersville, in the county of Marshall, in the State of Alabama, and in the payment of debts and liabilities of this company; and,

WHEREAS, Said Nashville, Chattanooga & St. Louis Railway was induced to aid this company, by the expenditure and advance of said sum of money, with the view and for the purpose of connecting the line of railroad of this company to and with the line of railroad of said Nashville, Chattanooga & St. Louis Railway, north of the Tennessee river, at some point on such line, either in the county of Madison or in the county of Jackson, in this state, so that a continuous line of railroad will be

constructed and operated to and from said city of Gadsden, to such point of the line of railroad of said Nashville, Chattanooga & St. Louis Railway, north of the Tennessee river, as may be selected, and thence to Chattanooga and Nashville, in the state of Tennessee; and,

WHEREAS, Said Nashville, Chattanooga & St. Louis Railway is the holder and owner of one hundred and five of the first and only mortgage bonds of this company, each for the payment of one thousand dollars, and which, with the semiannual interest thereon for the years 1888, 1889, and 1890, are unpaid; and,

WHEREAS, This company has not the ability to pay the said debts and to continue the construction of its said line of road from the city of Gadsden to a point at or near Gunter's landing, on the Tennessee river, and thence across said river, connecting with other lines of railroad, without the borrowing of money and contracting a large indebtedness, which is not believed to be to the interest of the stockholders of this company; therefore,

1. *Be it resolved*, That it is expedient for this company, and to the best interest of the stockholders, to make sale to said Nashville, Chattanooga & St. Louis Railway of all the property, rights of property, real and personal, and of all the rights, privileges, and franchises of this company in payment of the said indebtedness of this company, the said Nashville, Chattanooga & St. Louis Railway stipulating and covenanting to complete the construction of the line of road of the company now in the course of construction to a point at or near Gunter's landing, on the Tennessee river, and thence across said river to a point on its lines of railroad aforesaid.

2. *Be it further resolved*, That the foregoing preamble and resolution shall be submitted to a meeting of the stockholders of this company called for the purpose of considering the same, of which meeting due and legal notice shall be given said stockholders. And if said preamble and resolution be approved by a majority of said stockholders and the stockholders of said Nashville, Chattanooga & St. Louis Railway and if the board of directors thereof shall assent to make the said purchase on

the terms and conditions expressed in said resolutions, the board of directors of this company are authorized and empowered to cause all necessary and proper conveyances to said Nashville, Chattanooga & St. Louis Railway to be made and executed by this company. And,

WHEREAS, As subsequently said preamble and resolutions were submitted to a meeting of the stockholders of said party of the first part, convened in the city of Huntsville aforesaid, on the thirty-first day of March, 1891, for the purpose for which it was called. Due and legal notice was given to each and every stockholder, saving and excepting W. C. Waddle, A. M. Davenport, and H. W. Pickens, who own, in the aggregate, twelve shares, and whose residences were and are unknown; and,

WHEREAS, After considering said resolution, the said stockholders, at said meeting, adopted a resolution approving the said preamble and resolutions, and instructing the board of directors of the party of the first part to make the said sale, and all the necessary and proper conveyances to carry the same into effect; and,

WHEREAS, The stockholders and the board of directors of the said party of the second part have considered the said preamble and resolutions, and have approved the same, and assented to the sale on the terms and conditions in said preamble and resolutions expressed:

NOW, THIS INDENTURE FURTHER WITNESSETH, That for and in consideration of the stipulations and covenants of the said party of the second part hereinafter expressed, said party of the first part hath given, granted, bargained, sold, and conveyed, and by these presents doth give, grant, bargain, sell, and convey, unto said party of the second part, its successors and assigns, forever, all the line of railroad of said party of the first part now constructed, extending from said city of Gadsden, in all about thirty miles in length; and also the right or rights of way therefor, roadbed, superstructure, and all lands, depot grounds, station houses, depots, tools, materials, equipments, and rolling stock, and all other property, real or personal, appertaining to said road, and to the use thereof, now owned or



possessed by said party of the first part; and also including any and all other property, real or personal, and all rights of property now had or possessed by said party of the first part, and all the rights, privileges, and franchises which are held and possessed by said party of the first part.

To have and to hold the above mentioned and hereby granted property and rights of property, rights, privileges, and franchises, unto the said party of the second part, its successors and assigns, forever;

AND, FURTHER, That it, said party of the second part, its successors and assigns, will pay to each stockholder of the said party of the first part the par value of his stock, on the surrender and cancellation of his certificate or certificates of stock.

AND, FURTHER, That it, said party of the second part, its successors and assigns, will continue and complete the construction of the line of railroad hereby granted and conveyed, to a point at or near Gunter's landing, on the Tennessee river, and thence across said river to some point on its line of railroad north of said river, so as to form a continuous line of road in the said preamble and resolutions contemplated and intended.

IN WITNESS WHEREOF, That parties hereto above caused these presents to be signed by their respective presidents, and their corporate seals to be hereto affixed, and attested by their respective secretaries, this, the sixth day of April, 1891.

THE TENNESSEE & COOSA RAILROAD CO.,

By J. W. THOMAS, *President*.

Attest: J. H. AMBROSE, *Secretary*.

The Tennessee & Coosa Railroad Company has no seal.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

[SEAL.]

By J. W. THOMAS, *President*.

J. H. AMBROSE, *Secretary*.

STATE OF TENNESSEE, )

Davidson County. ( On this, the sixth day of April, A.D. 1891, before me J. T. Spalding, a notary public, duly authorized to act in and for the above named county, come the Tennessee & Coosa Railroad Company, by its president, J. W.

Thomas, and its secretary, J. H. Ambrose; and the Nashville, Chattanooga & St. Louis Railway, by its president, J. W. Thomas, and its secretary, J. H. Ambrose, to me personally known to be the identical persons whose names are affixed to the foregoing instrument, and acknowledged the execution of said instrument to be their voluntary act and deed as such president and secretary, and for and as the voluntary act and deed of the said Tennessee & Coosa Railroad Company and the said Nashville, Chattanooga & St. Louis Railway; and being by me duly sworn, they say that they reside in Nashville, Tenn., and that J. W. Thomas is president and J. H. Ambrose is secretary of the Tennessee & Coosa Railroad Company, also, that J. W. Thomas is president and J. H. Ambrose is secretary of the Nashville, Chattanooga & St. Louis Railway, and that they executed the said instrument by order of the boards of directors of said companies.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal, at Nashville, Tenn., the day and year first above written. [SEAL.] J. T. SPALDING, *Notary Public*.

The above deed was registered in the office of judge of probate court, of Marshall county, in book S. p. 277; in Etowah county, in book 31, p. 366.

## **ACTS ALABAMA RELATING TO TENNESSEE & COOSA RAILROAD COMPANY.**

### **1. Termini of Tennessee & Coosa Railroad changed.**

SECTION 1. *Be it enacted by the General Assembly of Alabama*, That the third section of an act entitled "An act to incorporate the Tennessee & Coosa Railroad Company," approved January 16, 1844, which is in the following words, to wit: "Sec. 3. *And be it further enacted*, That said railroad shall extend from some point at or near Gunter's landing, on the Tennessee river, to the most eligible point on the Coosa river, between the base of Lookout Mountain and the Ten Island Shoals, and shall be located with a view to the extension at some future day to some point on the Alabama river," be, and the same is hereby, amended so as to read as follows: "That said railroad shall extend from some point at or near

Gunter's landing, on the Tennessee river, to a point to be selected by said company or their successors, on the boundary line between the states of Tennessee and Alabama, with a view to its further extension in a northern or northwestern direction, as said company may determine, and from said point at or near Gunter's landing, on said Tennessee river, to some point at or near the towns of Attalla or Gadsden, in Etowah county, thence, by way of the cities of Talladega and Wetumpka, to the city of Montgomery, on the Alabama river; *Provided*, That the provisions of this act shall in nowise impair or affect any contract or agreement heretofore made by the said Tennessee & Coosa Railroad Company with the East Alabama & Cincinnati Railroad Company.

SEC. 2. *Be it further enacted*, That said sec. 3 of said act, as amended, shall not be so construed as to divert, in any way whatever, any rights, powers, privileges, or purchases now possessed or owned under and by virtue of any law or laws of this state.

SEC. 3. *Be it further enacted*, That the true intent and meaning of this act is to authorize and empower said company to construct a railway from Gunter's landing, on the Tennessee river, to the boundary line of the states of Tennessee and Alabama, with a view to its further extension in a northern or northwestern direction, as may be determined by said company, and from said Gunter's landing, on said river, to some point at or near the towns of Attalla or Gadsden, in Etowah county, thence by way of the cities of Talladega and Wetumpka to the city of Montgomery, on the Alabama river; *Provided*, That said Tennessee & Coosa Railroad Company be, and are hereby, required to give the same accommodations to all persons paying the same fare, without regard to race, color, or previous condition of servitude, and that said Tennessee & Coosa Railroad Company shall not refuse to sell first-class tickets to any person or persons applying for the same on account of race or color. (Acts Ala., 1872-3, p. 422; approved April 22, 1873.)



## 2. Tennessee & Coosa Railroad Company released from indebtedness to State of Alabama.

WHEREAS, The legislature of Alabama has heretofore appropriated, loaned, and advanced to the Tennessee & Coosa Railroad Company, portions of the two and three per cent. fund, which have been applied to the construction of said road, by means of which, and of moneys derived from subscriptions of stock, the said road was graded, in 1861; and, whereas, by reason of the war the work on said road was suspended, the company impoverished, and the sureties on the second bonds given to the state are unable to meet their liabilities; and, whereas, assurances are given that said railroad, which is deemed of great importance to the people of Alabama, can be finished in a reasonable time, if the state of Alabama remits its claims upon said company; therefore,

Preamble.

SECTION 1. *Be it enacted by the General Assembly of Alabama,* That the Tennessee & Coosa Railroad Company be, and they are hereby, released and discharged from all obligations, bonds, claims, and demands due from said company to the state of Alabama, by reason of any appropriations to said road of the two and three per cent. funds, or any part thereof, and the said portions of said funds heretofore appropriated to said road are hereby donated to the same; *Provided,* The said railroad shall be completed in two years from the date of the approval of this act; *Provided,* That nothing in this act contained shall be so construed or held as to make the state of Alabama responsible or bound to any other company for the portions of the said two and three per cent. funds hereby released and granted to said Tennessee & Coosa Railroad Company; and the state hereby quitclaims and releases to said Tennessee & Coosa Railroad Company all its right and title to said two and three per cent. funds heretofore appropriated to said railroad company; *Provided further,* That the said company shall receive no further aid from the state of Alabama, by the indorsement of its bonds or otherwise.

Release of claims.

Proviso.

State quit-claims.

SEC. 2. *Be it further enacted,* That as a condition on which

the said railroad is released from the payment of the two and three per cent. fund to the state, the said railroad company shall transport passengers at a rate not to exceed four cents per mile, and all local freights at a rate not to exceed twenty-five per cent. higher than is charged for through freight. (Acts Alabama, 1869-70, p. 290, No. 245; approved March 2, 1870.)

### 3. Charter amended, directors to make semiannual report to governor.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama, in General Assembly convened,* That the president and directors of the Tennessee & Coosa Railroad Company be, and they are hereby, required to make a report on the fifteenth day of December, 1857, and every six months thereafter, to the governor of the State of Alabama, which said report shall show the manner in which they have used the money received by them under the provisions of an act entitled "An act to appropriate the unappropriated part of the two per cent. fund, and a portion of the three per cent. fund," approved February 4, 1850, by the provisions of which they were authorized to receive, upon conditions, certain amounts of the two and three per cent. funds: said report shall exhibit the amount of said two and three per cent. funds now on hand, what amount is loaned out, and in what way and upon what security, and when the same is payable, and also what amount of said funds have been paid out and finally disposed of by them, and for what purposes.

SEC. 2. *Be it further enacted,* That the said president of the said railroad company shall, before submitting the said report provided for in the preceding section of this act, make affidavit of the correctness thereof before some officer of this state authorized by law to administer oaths.

SEC. 3. *Be it further enacted,* That if the said president and directors of said Tennessee & Coosa Railroad Company, and their successors in office, shall fail

or neglect to comply with the provisions of this act, then so many of them as assent to or sanction such failure or neglect shall be deemed guilty of a misdemeanor, and upon conviction thereof upon indictment shall be punished by fine and imprisonment, one or both, at the discretion of the jury trying the same; and shall, moreover, be personally liable in their private property to the state for the amount of said two and three per cent. funds which may be by them misapplied or squandered. Jury.

SEC. 4. *Be it further enacted*, That upon the passage and approval of this act it shall be the duty of the clerk of the house of representatives forthwith to send a certified copy of it to the said president and directors of the said Tennessee & Coosa Railroad Company. (Acts Ala., 1857-8, p. 310, No. 295; approved November 30, 1857.) Clerk.

#### 4. Charter amended; suits for subscription; witnesses.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That an act entitled "An act to incorporate the Tennessee & Coosa Railroad Company," approved January 16, 1854, be, and the same is hereby, so amended that the said company shall be, and hereby are, authorized to bring suits for installments due upon subscriptions for stock in said company, before any justice of the peace, when the amount due at the time the suit is brought is less than fifty dollars. Amended.

SEC. 2. *Be it further enacted*, That in all suits brought by said company against delinquent stockholders, no one shall be excluded from being a witness on the trial of the same by reason of being a stockholder in said company. (Acts Ala., 1855-56, p. 322, No. 316; approved January 16, 1856.)

#### 5. Charter amended; time of holding elections changed.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Alabama in General Assembly convened*, That the time of holding the annual election of president and board of directors of the Tennessee & Coosa Railroad



Company be changed from the twenty-second of November to the first Monday in January, and that all acts done by the present board from the twenty-second of November, 1866, to the first Monday in January, 1867, be, and the same are hereby, legalized and made firm and binding, any existing law to the contrary notwithstanding. (Acts Ala., 1866-67, p. 163; approved December 7, 1866, No. 183.)

**6. Act construing Acts Alabama, approved February 19, 1889, releasing Tennessee & Coosa Railroad Company from indebtedness to state.**

*Be it enacted by the General Assembly of Alabama, That,* WHEREAS, When the act entitled "An act to amend an act entitled an act to release the Tennessee & Coosa Railroad Company from its indebtedness to the State of Alabama" was passed and approved, the extension of the line of said railroad north of the Tennessee river had been located to run to the city of Huntsville, in Madison county, in this state, and the construction of said road, as thus located, had been let and contracted to be built, and some six miles thereof graded from said city of Huntsville; and,

WHEREAS, One of the chief inducements to the release of the indebtedness due the State of Alabama from said railroad company provided by said act was said extension to said city of Huntsville, thereby giving railroad communication with said city to the citizens of other portions of the state; and,

WHEREAS, It appears that it is contemplated by said railroad company, and those in charge thereof, to abandon said line and located route to said city of Huntsville, and substitute therefor another and different route; now, therefore,

It is hereby declared to be the true intent and meaning of said act of February 19, 1889, and said act is amended to read as follows:

SECTION 1. *Be it enacted by the General Assembly of Alabama, That* the Tennessee & Coosa Railroad Company be, and they are hereby, discharged from all obligations, bonds, claims, and demands due from said company to the State of Alabama, by reason of any appropriation to said road of the two and

three per cent. funds, or any part thereof, and the said portions of the said funds heretofore appropriated to said road, are hereby donated to the same; *Provided*, The said railroad, as now located from the city of Gadsden, on the Coosa river, to the city of Guntersville, on the Tennessee river, and thence to the city of Huntsville, in Madison county, in this state, shall be completed in five years from the date of approval of said amendment, February 19, 1881; *Provided*, That nothing in this act contained shall be so construed or held as to make the State of Alabama responsible or bound to any other company for the portions of the said two and three per cent. funds hereby released and granted to said Tennessee & Coosa Railroad Company, and the state hereby quitclaims and releases to said Tennessee & Coosa Railroad Company all its rights and title to said two and three per cent. funds heretofore appropriated to said railroad company; *Provided further*, That the said company shall receive no further aid from the State of Alabama by the indorsement of its bonds or otherwise.

Release conditional.

SEC. 2. *Be it further enacted*, That all laws and parts of laws in conflict with this act be, and the same are hereby, repealed. (Acts Ala., 1890-91, p. 399.)

1. The above act, not having been approved or returned by the governor, became a law under sec. 13. art V., of the constitution.

2. The above act is doubtless unconstitutional, as against the vested rights of the company. Again, it is not the province of the legislature to expound the meaning of previously existing laws. They can say what the law *shall* be, but not what it *is*. 2 Hum. (Tenn.), 304; 1 Bax. (Tenn.), 319.

**Nashville, Chattanooga & St. Louis Railway allowed to build road or branch through counties of Madison, Marshall, and Etowah to Attalla or Gadsden, Alabama, with rights, privileges, etc., of Tennessee charter.**

SECTION 1. *Be it enacted by the General Assembly of Alabama*, That the Nashville, Chattanooga & St. Louis Railway, a corporation chartered under the laws of the State of Tennessee, be, and the same is hereby, authorized and empowered to construct, operate, and maintain its road, or a branch thereof, in and through the counties of Madison, Marshall, and Etowah, in the

State of Alabama, beginning at Huntsville, in Madison county, and extending thence through the counties of Madison, Marshall, and Etowah, to Attalla or Gadsden, in said Etowah county.

SEC. 2. *Be it further enacted*, That the said Nashville, Chattanooga & St. Louis Railway shall have and enjoy all the rights, privileges, and immunities not in conflict with the constitution of the State of Alabama, and be subject to such restrictions as are granted to and imposed upon said Nashville, Chattanooga & St. Louis Railway by the act or acts chartering the same, so far as said railway lies in the counties of Madison, Marshall, and Etowah, or may hereafter be constructed therein. (Acts Ala., 1890-91, p. 154; approved December 10, 1890.)

## 7. State aid to Tennessee & Coosa Railroad Company.

The following acts of Alabama relating to the Tennessee & Coosa Railroad will so seldom be required that it is deemed unnecessary to set them out in full, but simply to give the book and page where they can be found:

1. Acts Alabama, 1844, p. 39, which loaned the two per cent. fund to the Tennessee & Coosa Railroad Company.

2. Acts of Alabama, 1853-54, p. 280, which also loans a part of the two and three per cent. funds to the Tennessee & Coosa Railroad Company, upon certain conditions relating to work upon and completion of the road. (See, also, 36 Ala., 371.) This act was amended by Acts 1855-56, p. 240, passed December 19, 1855, so as to amend section five of this act. (See 36 Ala., 371.)

3. Acts Alabama, passed February 24, 1860, the fifth section of which construes the first section of the act ordering the loan to the Tennessee & Coosa Railroad. (See 36 Ala., 371.)

4. Acts of Alabama, 1861, p. 80 (extra session), which postpones the loan of the State of Alabama to the Tennessee & Coosa Railroad.

5. Acts of Alabama, 1869-70, p. 290, No. 245, which releases Tennessee & Coosa Railroad Company from its indebtedness to the state of Alabama. This act, however, is set out above.



6. Acts of Alabama, 1875-76, p. 154, which made it the duty of the governor to transmit to all railroads a list of the lands as certified to the state by the commissioners of the general land office and approved by the secretary of the interior, and to indorse his approval thereon, and this to operate as a conveyance on the part of the state of all its title to said lands.

7. Acts of Alabama, 1882-83, p. 62, relates to the state lands claimed by the Tennessee & Coosa Road.

8. Acts of Alabama, 1888-89, p. 479, which amends the first section of the Acts of 1869-70, p. 290, so as to make the release and donation of the loan of said funds dependent upon the completion "of said railroad in five years from the approval of the act."

There is no doubt, however, but that the completion of the road from Guntersville to Gadsden satisfies the conditions of the act of 1889 above referred to, and discharges the road from further liability for the funds loaned to them.

## CHAPTER XXVIII.

*THE WEST NASHVILLE RAILWAY COMPANY.*

## (WEST NASHVILLE BRANCH.)

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—On July 6, 1887, the Nashville Land Improvement Company, in pursuance of a resolution of its directors and stockholders, sold the West Nashville Railway, its rights, franchises, etc., to the Nashville, Chattanooga & St. Louis Railway. The Nashville Land Improvement Company had previously purchased the road, franchise, etc., from the West Nashville Railway Company, which latter company was chartered under the general acts of 1875, ch. 142, to construct a railroad from a point on the Northwestern division of the said Nashville, Chattanooga & St. Louis Railway, about two and three-fourths miles from the Church street depot, to a point on the bluff on the Cumberland river near the line between the Mark S. Cockrill place and the old Clifton town site, in Davidson county, Tennessee.

The consideration paid was an agreement on the part of the Nashville, Chattanooga & St. Louis Railway to operate the road and charge thereon for freight and passengers according to a scale set out in the deed, and, in addition, to run a certain number of trains per day. For a more perfect enumeration of the considerations passing, see deed in next chapter.

1. The agreement as to the number of trains to be run per day has been considerably modified by subsequent agreement.

2. **Legality of purchase.**—The purchase of this road, franchises, etc., was legal under the Acts of 1871, ch. 69, which superseded the Acts of 1871, ch. 22.

3. **Deed, where registered.**—The deed to the road is registered in the register's office of Davidson county, in book 109, p. 47.

**What franchises, etc., passed under this sale.**—In addition to the railroad and properties therein conveyed, the deed spe-

cifically provided for the transfer of all the rights, privileges, and franchises of the West Nashville Railway Company. For enumeration of said franchises, etc., see charter further on in this chapter.

**Width of right of way.**—The width of the right of way over that part of the road purchased from the Nashville Land Improvement Company is twenty feet on either side of the center of the road, save through the Elliston tract, which will also fully appear from the deed to said road in the next chapter.

Since the purchase of the road, however, from the Nashville Land Improvement Company, the same has been extended some distance. Over the line of this extension, if no contrary agreement with the landowner was entered into, the Nashville, Chattanooga & St. Louis Railway will doubtless be entitled, as the legal purchaser of said road, franchises, etc., to one hundred feet on either side of the center of the road, as the entry and construction of the road would be regarded as an appropriation of the full amount of land authorized by the charter, which would be two hundred feet, as above explained. 3 Lea (Tenn.), 478. See, also, sec. 33 of charter.

1. For the right of successive appropriation and its application to charters granted under the general acts of 1875, ch. 142, see *Eminent Domain, Right of Way*, herein. Refer to index.

2. By Acts 1849-50, ch. 266, sec. 3, it is provided that all branches of the Nashville & Chattanooga Railroad Company as may be made shall have the rights and privileges, and shall be placed in all respects on the same footing, as the Nashville & Chattanooga Railroad Company.

## ORIGINAL CHARTER OF THE WEST NASHVILLE RAILWAY COMPANY.

(Chartered under General Acts 1875, ch. 142.)

**SECTION 1. Incorporation, name, route, general powers.**—*Be it known*, That Norman M. Pierce, Volney James, L. H. Davis, H. W. Buttorff, and H. M. Pierce are hereby constituted a body politic and corporate by the name and style of "West Nashville Railway Company," for the purpose of constructing a railway from a point in the county of Davidson, State of Tennessee, on the Northwestern Division of the Nashville, Chattanooga & St. Louis Railway about two and three-



quarter miles from the Church street depot of said railway, in the city of Nashville, in Davidson county, Tennessee, to a point on the bluff of the Cumberland river near the line between the Mark S. Cockrill place and the old Clifton town site in Davidson county, Tennessee.

1. **Charter amended, may change termini.**—By Acts 1887, ch. 39, secs. 1 and 2, all railroad companies chartered under the general laws of this state, may, by resolution of board of directors, change either terminus before the final location of the road. See act for method.

2. **By-laws for arbitration sustained.** 7 Pick. (Tenn.), 64.

3. **Branch roads.**—By Acts 1889, ch. 158, all railroad companies chartered under the general laws of the state are allowed to build branch roads. See act itself for method.

**SEC. 2. General powers, continued.**—The general powers of said corporation are, to sue and be sued by the corporate name, to have and use a common seal, which it may alter at pleasure; if no common seal, then the signature of the name of the corporation by any duly authorized officer shall be legal and binding; to purchase and hold, or receive by gift, in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment, or part payment, of any debt due to the corporation, and sell realty for corporation purposes; to establish by-laws and make all rules and regulations not inconsistent with the laws and constitution deemed expedient for the management of corporate affairs; to appoint such subordinate officers and agents, in addition to the president and secretary or treasurer, as the business of the corporation may require; to designate the name of the office and fix the compensation of the officer.

**SEC. 3. Special provisions.**—The following provisions and restrictions are coupled with said grant of powers: A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors.\* The term of all officers may be fixed by the by-laws of the corporation; the same not, however, to exceed two years. The corporation may, by by-laws, make regulations concerning the subscription for, or transfer of stock; fix upon the amount of capital to be invested

in the enterprise, the division of the same into shares, the time required for payment thereof by the subscribers for stock, the amount to be called for at any one time; and in case of failure of any stockholder to pay the amount thus subscribed by him at the time and in the amounts thus called, a right of action shall exist in the corporation to sue said defaulting stockholder for the same.

\* See 3 Hum., 531; 12 Lea, 252; 4 Cold., 101.

**SEC. 4. Directors, quorum of, books.**—The board of directors, which may consist of five or more members, at the option of the corporation, to be elected either in person or by proxy, by a majority of the votes cast, each share representing one vote, shall keep a full and true record of all their proceedings, and an annual statement of receipts and disbursements shall be copied on the minutes, subject at all times to the inspection of any stockholder. The books of the corporation shall show the original or subsequent stockholders, their respective interests, the amount which has been paid on the shares subscribed, the transfer of stock, by and to whom made; also other transactions in which it is presumed a stockholder or creditor may have an interest.

**SEC. 5. Unpaid stock.**—The amount of any unpaid stock due from a subscriber to the corporation shall be a fund for the payment of any debts due from the corporation, nor shall the transfer of stock by any subscriber relieve him from payment, unless his transferee has paid up all or any of the balance due on said original subscription.

See 10 Pickle, 154, 608.

**SEC. 6. Express and implied powers.**—By no implication or construction shall the corporation be deemed to possess any powers except those hereby expressly given or necessarily implied from the nature of the business for which the charter is granted, and by no inference whatever shall said corporation possess the power to discount notes or bills, deal in gold or silver coin, issue any evidence of debts as currency, buy and sell any agricultural products, deal in merchandise, or engage in any business outside the purpose of the charter.

**SEC. 7. Charter may be repealed or amended.**—The right is reserved to repeal, annul, or modify this charter. If it is repealed, or if the amendments proposed, being not merely auxiliary but fundamental, are rejected by a vote representing more than half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications, being fundamental, are accepted by the corporation as aforesaid, in a general meeting to be called for that purpose, any minor, married woman, or other person under disability, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much; if not, then so much as may be its real value in the market on the day of the withdrawal of said stockholders as aforesaid; *Provided*, That the claims of all creditors are to be paid in preference to said withdrawing stockholders.

This charter is different from that of the Nashville, Chattanooga & St. Louis Railway in many ways. The charter of the latter company cannot be repealed or amended without consent of company. See sec. 34 of that charter.

**SEC. 8. Directors, quorum, powers, mortgages.**—A majority of the board of directors shall constitute a quorum, and shall fill all vacancies until the next election. The first board of directors shall consist of the five or more corporators who shall apply for and obtain the charter. The said corporation may have the right to borrow money and issue notes or bonds upon the faith of the corporate property, and also to execute a mortgage or mortgages as further security for repayment of money thus borrowed.

**SEC. 9. Condemnation of right of way; two hundred feet.**—The said corporation shall have the right, in pursuance of the general law authorizing the condemnation of private property for works of internal improvement, as set forth in §§ 1325 to 1348 in the code (both inclusive), to appropriate, as an easement, the right of way, not exceeding two hundred feet over the land of any person through which the line of the track may be located. Said sections of the code are hereby literally copied and inserted in the words and figures following:



**SEC. 10 (1325). Land may be taken, how.**—Any person or corporation authorized by law to construct any railroad, turnpike, canal, tollbridge, road, causeway, or other work of internal improvement to which the like privilege is conceded, may take the real estate of individuals not exceeding the amount prescribed by law, or by the charter under which the person or corporation acts, in the manner and upon the terms herein provided. (Iowa code, 1851, § 759.)

1. **Disability of owner does not affect right.**—The right to take land under the power of eminent domain is not restricted by any disability of the owner, who is entitled to demand and receive the value of the property, but must show title. 3 Head, 63.

2. **What property may be taken.**—By Acts 1885, ch. 135, the operation of this and succeeding sections was extended so as to apply and include the condemnation of private corporations. See Act itself for method.

3. **Must not take county road.**—By Acts 1889, p. 447 (Shannon's code, § 1879), it was made unlawful to construct or use any steam railway on any county road or highway, without the consent of the county court, to be granted in the method therein set out.

**SEC. 11 (1326). Proceedings, petition, etc.**—The party seeking to appropriate such lands shall file a petition in the circuit court of the county in which the land lies, setting forth in substance: (1) The parcel of land a portion of which is wanted, and the extent wanted, (2) the name of the owner of such land, or, if unknown, stating the fact, (3) the object for which the land is wanted, (4) a prayer that a suitable portion of land may be decreed to the petitioner, and set apart by metes and bounds. (Iowa code, 1851, § 760.)

The petition need not be sworn to.

**SEC. 12 (1327). Notice to owner.**—Notice of this petition shall be given to the owner of the land, or, if a nonresident of the county, to his agent, at least five days before its presentation. (*Ib.*, modified.)

**SEC. 13 (1328). Where owner nonresident.**—If the owner is a nonresident of the state, or unknown, notice shall be given by publication as provided in this code in similar cases in chancery.

**SEC. 14 (1329). Proceedings only bind parties.**—All parties having any interest in any way in such land, may be made de-

fendants, and the proceedings will only cover and affect the interest of those who are actually made parties, unborn remaindermen being, however, bound by proceedings to which all living persons in interest are parties.

Tenants for life, years, and reversioners are interested parties, and must be compensated. 2 Head (Tenn.), 65, 176.

**SEC. 15 (1330). Writ of inquiry of damages.**—After the requisite notice has been given, if no sufficient cause to the contrary is shown, the court shall issue a writ of inquiry of damages to the sheriff, commanding him to summon a jury to inquire and assess the damages. (Iowa code, 1851, § 763.)

**SEC. 16 (1331). Clerk to issue writ, sheriff to summon jury.**—By consent of parties, or on application of the plaintiff, unless objection is made by the defendant, the writ of inquiry may be issued by the clerk, as of course, after service of notice, on which the sheriff will summon the jury.

**SEC. 17 (1332). Jury to be disinterested.**—The jurors shall not be interested in the same, or a similar question, and shall possess the qualifications of other jurors, and may be nominated by the court, selected by consent of parties, or summoned by the sheriff.

**SEC. 18 (1333). Failure to attend.**—If named by the court, and the persons named are unable to attend when summoned, the place of such persons shall be supplied by the sheriff.

**SEC. 19 (1334). Number of jurors, challenges.**—The jury will consist of five persons, unless the parties agree upon a different number; and either party may challenge for cause, or peremptorily, as in other civil cases.

See 11 Heis., 56; 12 Heis., 56, 57.

**SEC. 20 (1335). Notice of taking inquest.**—The sheriff shall give the parties or their agents, if residents of the county, three days' notice of the time and place of taking the inquest, unless the time has been fixed by the order of the court. (Iowa code, 1851, sec. 771.)

**SEC. 21 (1336). Jury to be sworn by sheriff.**—The jury, before proceeding to act, shall be sworn by the sheriff, fairly and impartially, without favor or affection, to lay off by metes

and bounds the land required for the proposed improvement, and to inquire and assess the damages.

**SEC. 22 (1337). To examine ground and assess damages.**—The jury will then proceed to examine the ground, and may hear testimony, but no argument of counsel, and set apart by metes and bounds, a sufficient quantity of land for the purposes intended, and assess the damages occasioned to the owner thereby. (Iowa code, 1851, § 768.)

See 3 Lea, 482.

**SEC. 23 (1338). Damages, how estimated.**—In estimating the damages, the jury shall give the value of the land without deduction, but incidental benefits which may result to the owner by reason of the proposed improvement may be taken into consideration in estimating the incidental damages.

For full discussion of this, see *Eminent Domain* herein. Refer to index.

**SEC. 24 (1339). Report returned in writing.**—The report of the jury shall be reduced to writing, signed by a majority of the jurors, delivered to the sheriff, and by him returned into court.

**SEC. 25 (1340). Confirmation of report.**—If no objection is made to the report, it is confirmed by the court, and the land decreed to the petitioner, upon payment to the defendants, or to the clerk for their use, of the damages assessed, with costs. (*Ib.*, § 775, modified.)

**SEC. 26 (1341). Exception to report and new writ.**—Either party may object to the report of the jury, and the same may, on good cause shown, be set aside, and new writ of inquiry awarded. (Act 1849–50, ch. 72, sec. 5.)

**SEC. 27 (1342). Appeal, new trial.**—Either party may also appeal from the finding of the jury, and on giving security for the costs, have a trial anew before a jury in the usual way. (*Ib.*, modified.)

See 12 Heis. (Tenn.), 57.

**SEC. 28 (1343). Costs against appellant, when not.**—If the verdict of the jury upon the trial affirms the finding of the jury of inquest, or is more unfavorable to the appellant than the finding of such jury, the costs shall be adjudged against



such appellant; otherwise the court may award costs as in chancery cases. (*Ib.*)

SEC. 29 (1344). **Appeal does not suspend work.**—The taking an appeal does not suspend the operations of the petitioner on the land, provided such petitioner will give bond with good security, to be approved by the clerk, in double the amount of the assessment of the jury of inquest, payable to the defendant, and conditioned to abide by and perform the final judgment in the premises.

SEC. 30 (1345). **Preliminary surveys, damages.**—A person or company actually intending to make application for the privileges herein contemplated, and entering upon the land of another for the purpose of making the requisite examinations and surveys, and doing no unnecessary injury, is liable only for the actual damage done; and sued in such case, the plaintiff shall recover only as much costs as damages. (Iowa code, 1851, § 778.)

SEC. 31 (1346). **Damages to be prepaid, or bond on appeal.**—No person or company shall, however, enter upon such land for the purpose of actually occupying the right of way until the damages assessed by the jury of inquest and the cost have been actually paid; or, if an appeal has been taken, until the bond has been given to abide by the final judgment as before provided.

See 6 Cold., 162; 7 Heis., 518, 535; 13 Lea, 671.

SEC. 32 (1347). **Owner may have inquest or sue for damages, when; proceedings.**—If, however, such person or company has actually taken possession of such land, occupying it for the purpose of internal improvement, the owner of such land may petition for a jury of inquest, in which case the same proceedings may be had, as near as may be, as hereinbefore provided; or he may sue for damages in the ordinary way, in which case the jury shall lay off the land by metes and bounds and assess the damages, as upon the trial of an appeal from the return of a jury of inquest.

SEC. 33 (1348). **Limitations of proceedings by owner.**—The owners of land shall, in such cases, commence proceedings within twelve months after the land has been actually taken

possession of, and the work of proposed internal improvement begun, saving, however, to unknown owners and nonresidents twelve months after actual knowledge of such occupation, not exceeding three years, and saving to persons under disabilities of infancy, coverture, and unsoundness of mind twelve months after such disability is removed, but not exceeding ten years.

**SEC. 34. Gauge, transportation charges; tracks not to obstruct roads, streets, etc.**—The corporation is authorized to adopt such gauge as they may prefer. The charge for transportation shall not exceed twenty-five cents per hundred pounds on heavy articles and ten cents per cubic foot on articles of measurement for every hundred miles transported, and four cents per mile for every passenger, with power to make special contracts with shippers on their roads in regard to rate of freight, so as not to exceed the amounts herein designated. The line of track of the road shall be so constructed so as not to interfere with convenient travel of the public along the highways, country roads, streets and alleys of cities, towns, and villages, and so as to allow carts, wagons, carriages, and other vehicles conveniently and safely to pass over or under the line of the track, and so as not to intercept traveling on foot or horseback, or in vehicles of any kind, from the necessary and proper use of the public roads, streets, or alleys, in the usual and proper mode for their convenience.

**SEC. 35. Crossings, signboards.**—Boards well supported by posts or otherwise shall be placed and constantly kept across each public road, when the same is crossed on the same level by the track of the railway, the boards to be elevated so as not to obstruct travel, and on each side of said boards there shall be printed in large letters, easily to be seen by the traveler, the words: "Railroad Crossing—Look out for the Cars." Said boards need not be put up at the crossing of streets and alleys in cities, towns, and villages, but such railroad company shall be subject to such proper regulations made by municipal authorities, in pursuance of general municipal powers regulating speed, passage, and flagmen in such municipalities and at crossings; and when there are sidings and switches, the whistle shall

always be blown at a distance of not less than two hundred and fifty yards from every crossing of a public road. When land on both sides of the track is owned by the same proprietor, convenient crossings shall be made and kept up at the expense of the corporation for the use of said proprietor, and all necessary cow-gaps made.

**SEC. 36. Regulations for running trains; fare must be paid.**—The board of directors shall fix the regular times for the running of trains for the transportation of passengers and property, and shall furnish sufficient accommodation for the safe, comfortable, and convenient transportation, and shall take, transport, and discharge such passengers and property at, from, and to such places on the due payment of freights, tolls, and fare legally authorized to be charged therefor, and in case of the refusal of said corporation, their officers or agents, to take and transport any passenger, or to deliver the same, or either of them, at the regular and appointed time, such corporation shall pay to the party aggrieved all damages thereby suffered, with costs of suit. If any passenger refuse to pay his toll or fare, the conductor may put him off the cars at any station or convenient point where said passenger can step on land.

**SEC. 37. Prohibited contracts, must receive freight from other roads.**—The corporation shall make no contract giving any person a preference in the speedy shipment of freights. This corporation shall receive on their road full freighted cars from other roads, and transport them, without breaking bulk, to the place of destination, charging for the goods, wares, and merchandise therein no greater rate of freight than is charged for similar goods, wares, and merchandise in their own cars, and return said cars free of charge; *Provided*, The cars thus to be received are good and substantial, and also provided the distance said wares and merchandise are to be transported is not less than twenty miles.

**SEC. 38. Officers and directors, capital stock, shares, books.**—The said five or more corporators shall, within a convenient time after the registration of this charter in the office of the secretary of state, select from their number a



president, secretary, and treasurer, or the last two offices may be combined into one, and shall not necessarily be stockholders, said president and the other corporators to constitute the first board of directors. The board of directors may fix the amount of capital stock of the company and the number of shares into which the same may be divided, and under their direction subscription books may be opened to obtain stock, all other persons having an equal right with said original corporators to subscribe for stock until the full amount of said capital stock is subscribed. When a sufficient amount of stock is subscribed, notice, personal or by advertisement in a newspaper where the principal office of the corporation is to be kept, is to be given of the time and place of an election of officers. The result of all elections is to be determined by a majority of the votes cast, each share to represent one vote.

**SEC. 39. Directors may increase capital.**—The board of directors may, at any time, increase the capital stock, if the necessities of the corporation, in their estimation, require said increase.

The capital stock was increased to \$80,000. See secretary of state's office, book PP. p. 107.

**SEC. 40. May enter upon private lands.**—The company, by its officers or agents, may enter upon the lands of private persons for the purpose of making surveys, estimates, and location of route.

**SEC. 41. Shares of stock personalty.**—The stock is to be impressed with the character of personal property.

We, the undersigned, apply to the State of Tennessee, by virtue of the law of the land, for a charter of incorporation for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, this sixteenth day of March, 1887.

NORMAN M. PIERCE,  
VOLNEY JAMES,  
L. H. DAVIS,  
H. W. BUTTORFF,  
H. M. PIERCE.

The above charter was properly acknowledged and registered in the register's office of Davidson county, in book 103, p. 1, and in secretary of state's office, in book F, p. 126.

## CHAPTER XXIX.

## DEED TO WEST NASHVILLE RAILWAY.

NASHVILLE LAND IMPROVEMENT COMPANY

TO—*Deed.*

NASHVILLE, CHATTANOOGA &amp; ST. LOUIS RAILWAY. }

WHEREAS, The Nashville Land Improvement Company, a corporation chartered under the laws of the State of Tennessee, is the owner, by deed and otherwise, of a railroad consisting of track bed, steel rails, cross-ties, and a right of way forty feet in its entire width, or of twenty feet on either side of the center of the track as now laid out and fenced, together with the franchise to operate the same, and other rights and privileges hereunto appertaining and belonging, with depots and depot grounds, buildings, switches, etc., extending from a point on the Northwestern division of the Nashville, Chattanooga & St. Louis Railway, two and six-tenths miles from Church street, twelve thousand feet to a point near Cumberland river, and wherever said land improvement company own other lands beyond the terminus of said road, and desire to have said road extended as hereinafter indicated; and,

WHEREAS, Said land improvement company desires to sell said railroad, and all its franchises, rights, privileges, etc., as more fully set out herein, to the Nashville, Chattanooga & St. Louis Railway, and to secure to itself thereby certain benefits of transportation freightage;

Now, in consideration of this conveyance, and the mutual covenants, agreements, and undertakings herein specified and set out, the said land improvement company does hereby bargain and sell, alien and confirm and convey, to the Nashville, Chattanooga & St. Louis Railway, and its assigns and its successors forever, the following real and personal estate, viz.: Said railroad tracks as now located, laid out and built, com-

mencing at a point on the Northwestern division of the Nashville, Chattanooga & St. Louis Railway, as indicated in the preamble hereto, for the distance of 12,000 feet, to a point near the Cumberland river, and to station 120 of said railroad tracks, and continuing from that point north 2° 3" east 25 feet from station 120; running thence north 87° 31" west 1,110 feet; thence north 2° 30" east 25 feet; thence north 87° 30" west 33.3 feet; thence on a 3° curve to right 1,200 feet; thence north 37° 25" west 2,654 feet; thence south 32° 35" west 100 feet; thence south 57° 25" east 2,654 feet; thence on a 3° curve to left 1,204 feet; thence south 87° 30" east 1,143.3 feet; thence north 2° 3" east 75 feet to the beginning, together with all the steel rails, cross-ties, fastenings, spikes, switches, turn-outs, fences, depots and depot buildings, warehouses, sheds, and all appurtenances upon, over, and along said track as laid out, or upon said right of way as indicated herein. Also does sell, bargain, and convey all its franchises, rights, and privileges given or conferred by its charter. Said rights of way consist of forty feet of land, or twenty feet from the center of said track on either side between the two termini mentioned, except as particularly specified, and except along that portion of said track which passes through the land of Joseph Elliston. On his portion of said track the width thereof is a sufficient number of feet on either side of each track as now laid out to lay a double track. Also it does alien and convey all its depots and depot grounds as now laid off and built upon, as shown upon plan No. 1 of said land improvement company. Also does it bargain and sell, alien, confirm, and convey, by this deed, blocks 89, 10, 12, 31, and 33, as laid out and described, and bounded as shown on said plan No. 1 of said land improvement company, which plan is registered in the register's office of Davidson county, book 57, pp. 74, 75.

Franchises  
pass.

Right of way.

And the said Nashville Land Improvement Company hereby covenants with the Nashville, Chattanooga & St. Louis Railway and its successors and assigns forever, that it is lawfully seized and possessed of each and every part and parcel of the real es-



tate hereinbefore described, and of the rights of way hereinbefore described, to the width and extent set out, and of the other property herein described, and that it has a good right to convey the same, and that the same is free of all liens, taxes, mortgages, and other incumbrances whatever; and it forever warrants and defends the title of the same to the Nashville, Chattanooga & St. Louis Railway, its successors and assigns forever. The Nashville, Chattanooga & St. Louis Railway, in consideration of the premises, covenants and binds itself to take said property for railroad purposes, and use and operate the same as a railroad, with a view to develop the best interest of the land improvement company, and it also agrees and binds itself to run and operate trains along and upon said road at the following rates for passengers and freights: That it will charge between West Nashville and the Church street depot of Nashville, Chattanooga & St. Louis Railway not exceeding one cent per hundred pounds either way in full carloads on lumber, brick, stone, machinery, lime, sand, coal, coke, pig iron, wood, or heavy freight for building purposes; also raw material for manufacturing purposes, and the products of factories located in West Nashville, said freight to be loaded and unloaded by shippers or consignee, and that it will not charge on any other freight between said points exceeding ten cents per hundred pounds, and that no transfer charge will be made either way between Nashville and West Nashville upon shipments of freight to or from West Nashville to or from points on or reached via the Nashville, Chattanooga & St. Louis Railway or the Louisville & Nashville Railroad. The Nashville, Chattanooga & St. Louis Railway also agrees and covenants to run from Church street to the terminus of the West Nashville Railway in West Nashville, three passenger trains daily each way—one in the morning, one at noon, and one in the evening—charging five cents per passenger each way, and will run to the passenger depot in West Nashville four other passenger trains daily each way—two in the morning and two in the afternoon—if requested to do so by the land improvement company, and such other trains as the business may require, and may charge five

cents per passenger each way; and it is further understood and agreed that it will make special rates for school children, and that none of the above rates include baggage; and it also agrees as manufactories are consecutively erected along the line of road as indicated herein, that it will extend the same along the line thereof and upon the right of way as indicated herein.

This July 6, 1887.

NASHVILLE LAND IMPROVEMENT COMPANY,

[SEAL.]

By H. M. PIERCE, *President*,  
C. FLISHER, *Secretary*.

STATE OF TENNESSEE, {  
Davidson County. }

Before me, J. C. McReynolds, notary public in and for said state and county, personally appeared H. M. Pierce and C. Flisher, with whom I am personally acquainted, the said H. M. Pierce being known to me to be the president and the said C. Flisher being known to be the secretary of the Nashville Land Improvement Company, the bargainor, and they severally acknowledged that said company and they, as its president and secretary, respectively, executed the foregoing instrument for the purposes therein expressed. And the said H. M. Pierce and C. Flisher, being by me first duly sworn, did severally depose and say that the said H. M. Pierce was the president of the Nashville Land Improvement Company, the within named bargainor, and the said C. Flisher was the secretary thereof; that they knew the corporate seal of said company, and that the seal affixed to the foregoing instrument, purporting to be the corporate seal of said company, was such corporate seal, and that the same was thereto affixed by order of the board of directors of said company, and that, by like authority, they severally subscribed their names thereto as president and secretary of said company, and as its said act and deed, for the purposes therein expressed. Witness my hand and seal, this sixth day of July, A.D. 1887.

[SEAL.]

J. C. McREYNOLDS, *Notary Public*.

The transfer of the West Nashville Railway to the Nashville, Chattanooga & St. Louis Railway, upon the terms and conditions set out in the annexed deed, is hereby accepted, in pursuance of authority given by the board of directors and stockholders of this company at their annual meeting held this day.

Nashville, Tennessee, September 14, 1887.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

By J. W. THOMAS, *President*.

J. H. AMBROSE, *Secretary*.

STATE OF TENNESSEE, )

Davidson County. (

Personally appeared before me, J. T. Spaulding, a notary public in and for the county aforesaid, the Nashville, Chattanooga & St. Louis Railway, by J. W. Thomas, president, and J. H. Ambrose, secretary, with both of whom I am personally acquainted, and who acknowledged that they each executed the foregoing instrument for the purposes therein contained.

Witness my hand and notarial seal, at Nashville, Tennessee, this fourteenth day of September, 1887.

[SEAL.]

J. T. SPAULDING,  
*Notary Public*.

Received September 14, 1887, at 4:40. Registered in R. O. D. C., in book 109, p. 47.



## CHAPTER XXX.

## WESTERN &amp; ATLANTIC RAILROAD.

## [WESTERN &amp; ATLANTIC BRANCH.]

**How acquired by the Nashville, Chattanooga & St. Louis Railway.**—The Western & Atlantic Railroad, which extends from the city of Atlanta, Ga., to the city of Chattanooga, Tenn., a distance of 138 miles, is owned by the State of Georgia. On November 12, 1889, the legislature of that state passed an act authorizing the road to be leased. Advertisement was made for bids, in conformity to the provisions of the act, and the Nashville, Chattanooga & St. Louis Railway submitted a proposition, in writing, offering to lease the road, together with all its houses, workshops, rolling stock, depots, and appurtenances of every kind and character, subject to the provisions of the act above referred to, for the period of twenty-nine (29) years, and agreeing to pay therefor the sum of thirty-five thousand and one dollars (\$35,001) per month as rental for the same. This bid was accepted June 30, 1890, and on July 19, 1890, the governor of the state formally executed the lease contract, which was to take effect immediately after the termination of a then existing one which had been executed on December 27, 1870, and was to expire twenty years thereafter. The act of November 12, 1889, authorizing the lease may be found further on in this chapter, and the lease contract is set out in the next.

1. **When road built by Georgia.**—The Western & Atlantic Railroad was authorized to be built by an act of Georgia approved December 21, 1836, and amended by acts December 23, 1837; December 29, 1838 (two acts); December 18, 1838; December 21, 1839; December 24, 1840; December 4, 1841; December 19, 1842; December 22, 1843; December 24, 1845; December 26, 1845; December 27, 1845; December 30, 1847; December 23, 1847; February 23, 1850 (two); February 8, 1850.

2. **Legality of lease.**—The Nashville, Chattanooga & St. Louis Railway had the power to lease this road. Under the Acts of Tennessee, 1857–58, ch. 8, p. 5, it was granted the authority to lease any railroad

connecting with it for such time and upon such terms and conditions as might be agreed upon. In addition, the authority was also conferred by Acts 1869-70, ch. 49, p. 327, sec. 4; 1871, ch. 69; 1881, ch. 9, p. 10, sec. 2. Authority to lease has been enlarged subsequently to the execution of the lease contract by Acts 1891, ch. 61, p. 146, and ch. 125, p. 274. The lease act itself gave authority in Georgia, though the power was already possessed. See, also, general discussion herein under the power to *Lease*. Refer to index.

3. **What personal property passed under lease.**—In addition to the railroad, the Nashville, Chattanooga & St. Louis Railway also came into possession of the following property under said lease contract: Forty-five locomotives, valued by the state at \$161,526 and by lessee at \$109,300; 32 passenger, baggage, and postal cars, valued by state at \$66,600 and by lessee at \$55,200; 455 box cars, valued by state at \$91,910 and by lessee at \$68,250; 120 coal cars, valued by state at \$21,000 and by lessee at \$15,000; 100 flat cars, valued by state at \$16,000 and by lessee at \$10,000; 15 stock cars, valued by state at \$4,005 and by lessee at \$2,250; a large quantity of tools, supplies, etc., valued by the state at \$33,093.60 and by lessee at \$33,093.60. All the foregoing property is carefully and accurately itemized and is now on file in the secretary's office, and is itemized and set out in full in next chapter.

4. **Relation state of Georgia bears to road.**—See § 964 of the code of Georgia, 1882. See also, 54 Georgia, 635; 28 Georgia, 180.

5. **What laws applicable to road.**—See § 965 *et seq.* of the code of Georgia, 1882. See also, "Lease Act" further on in this chapter.

**Width of right of way.**—There is nothing in the acts of Georgia, approved December 21, 1836, or amendments thereto, authorizing the road to be built, which specifies any particular number of feet to be appropriated for a right of way, nor is there any clause providing for a specified width in the absence of any contract with the original landowner, where he failed to apply in time for assessment. This being so, the width of right of way in *Georgia* will depend upon the actual amount appropriated through each landowner's premises, and to determine which reference must be had to the records on file in each county through which the road runs. The state claims, however, to own thirty-three feet on each side of the center of the road.

In *Tennessee* the width of right of way is ascertained differently. By Acts Tenn., 1837-8, ch. 221, p. 319, the Western & Atlantic Railroad was authorized to be built in Tennessee, with all the rights, privileges, etc., of the Hiwassee Railroad Company, and by Acts 1847-8, ch. 195, p. 330, all the rights, privileges, and immunities of the Nashville & Chattanooga Railroad Company were conferred upon the State of Georgia in the construction of said road. Sections 24 and 25 of the

charter of the Nashville & Chattanooga Railroad Company grant it one hundred feet on either side of the center of the road, in the absence of any contract with the original landowner to the contrary, where he failed to apply in time for assessment of damages. 5 Pickle (Tenn.), 293.

For a full discussion of this, see notes to secs. 24 and 25 of the charter of the Nashville & Chattanooga Railroad Company, ch. 1 herein.

1. The Acts of Tenn., 1837-8, ch. 221, and Acts 1847-8, ch. 195. above referred to, are set out in the next chapter among the Tennessee acts relating to the Western & Atlantic Railroad.

2. **Hiwassee Railroad Company charter.**—For charter of Hiwassee Railroad Company, see p. 63 herein.

3. **Nature of company's control of right of way.**—The dominion of a railroad corporation over its trains, tracks, and right of way is no less complete or exclusive than that which every owner has over his own property. Hence the corporation may exclude or admit whom it pleases when they come to transact their own private business with passengers or other persons. This applies to selling lunches to or soliciting orders from passengers, and a mere implied license, no matter how long enjoyed, to transact such business, for which no compensation has been paid, is *revocable* at any time. 81 Ga., 461. See, also, general discussion herein, under *Right of Way, Rules and Regulations*. Refer to index.

4. **Map of right of way.**—By Acts Ga., approved December 16, 1895, a map of the entire line of the Western & Atlantic Railroad has been made, and is now on file in the secretary of state's office. A certified copy thereof is admitted as *prima facie* evidence by terms of act.

## ACT AUTHORIZING LEASE OF WESTERN & ATLANTIC RAILROAD, AND INCORPORATING LESSEES.

[Acts Georgia, 1889, p. 362.]

**SECTION 1. Governor authorized to lease Western & Atlantic Railroad; terms.**—*Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met,* That the governor of the state be, and he is hereby, authorized to lease the Western & Atlantic Railroad, together with all its houses, workshops, rolling stock, depots, and appurtenances of every kind and character, to a company or corporation, or to any party or parties, who shall give good and sufficient security as hereinafter provided for; the said lease to take effect and become operative from and after the expiration of the present lease, upon the following terms and accord-



ing to the followin provisions: The said lease to be  
**Temrs of lease.** for a term of not less than twenty years, and for a sum of not less than thirty-five thousand dollars per month; or for a term of not less than thirty years, and for a sum of not less than forty thousand dollars per month; or for a term of fifty years, and for a sum of not less than forty-five thousand dollars per month, the rental to be paid monthly into the treasury of the state, for the use of the state.

**Lease, when made.**—When advertisement was made under this act, the Nashville, Chattanooga & St. Louis Railway submitted a bid, which was accepted June 30. 1890, and, on July 19, 1890, the governor of the state formally executed the lease contract to said railroad company. See contract of lease in next chapter.

**SEC. 2. Governor to advertise for bids.**—*Be it further enacted,* That the governor shall advertise for four weeks, weekly (immediately preceding the twenty-seventh of June, 1890), in such newspapers in the State of Georgia as he may designate, the number not to exceed four, and also one leading newspaper in each of the following cities: Chicago, Ill., Cincinnati, Ohio, New York, N. Y., such advertisement to be a definite proposal for bids as authorized by this lease act for the lease of the Western & Atlantic Railroad and other property in this act referred to.

**SEC. 3. Bids, how made and opened; rejection of, readvertisement.**—*Be it further enacted,* That all bids for the lease of said road shall be submitted, in writing, to the governor of this state, on or before the twenty-seventh day of June, 1890, and accompanied by a certified check for \$25,000, **Check for \$25,000 to accompany bid.** on some good and solvent bank in this state, as a guarantee of the good faith of the bidder, to be forfeited to the state if the bid is accepted by the state and the terms thereof shall not be complied with by the bidder. And the governor, comptroller-general, secretary of state, treasurer, and attorney-general, or a majority of them, within three days after the expiration of the time allowed for the reception of bids, shall open and examine said bids in the presence of the **Opening bids.** public and the bidders or their representatives who may be present; and the governor shall give due notice of the

time and place of such opening and examination of the bids by publishing the same in daily newspapers in the city of Atlanta one time, and determine which shall be accepted, with the right to reject any and all bids; and, in accepting bids, everything else being equal, the highest and best bidder for the longest term shall be accepted.

In the event all bids are rejected, then the governor shall, in ten days thereafter, readvertise the road under the same terms and conditions. In case the bidder accepted by the state shall fail to comply with his bid and take the road, it shall be readvertised, and the bidder shall be liable to the state for whatever damages may result to the state from his failure to comply with his bid, in addition to the twenty-five thousand dollars forfeited under this section; *Provided*, That no price less than that named in section 1, for the several terms, shall be accepted.

In case all bids rejected.

Proviso.

**SEC. 4. How lease contract to be drawn and executed, deposit of bonds.**—*Be it further enacted*, That any contract of lease entered into under this act shall be drawn and prepared by the attorney-general of this state, signed in duplicate by the parties leasing said road and the governor of the state. And, within twenty days after the acceptance of the bid, the successful bidder shall execute the contract required and make the deposit of bonds with the treasurer, to which bonds he shall have access, for the purpose of drawing the interest thereon.

Contract must be written by attorney-general.

**SEC. 5. Bonds to be deposited, conditions thereof, lease forfeited, when.**—*Be it further enacted*, That said lessees shall deposit with the treasurer of the state recognized valid bonds of the State of Georgia, or of the United States, of the par value of five hundred thousand dollars, and should said bonds, at any time, depreciate in value below their par value, or be reduced in payment of penalty in the nature of forfeiture, said lessees shall, within thirty days, make good said deposit, on being notified thereof by the governor, by the deposit of other bonds of like kind as above, so that bonds of the par and market value of five hundred thousand dollars shall, at all times, be deposited with

the treasurer as aforesaid, and, in default thereof, the governor may, in his discretion, declare said lease forfeited, with all the incidents of forfeiture herein provided.

**Forfeiture.** It shall be the duty of the governor and treasurer, from time to time, to inquire into the value of said bonds so deposited and report the same to each session of the legislature, and said bonds shall be held as collateral security by the state for the faithful performance of all the terms, obligations, and contracts of the lessees under said lease.

In compliance with the terms of the above section, the Nashville, Chattanooga & St. Louis Railway deposited with the treasurer of the State of Georgia, when the lease was executed, the following bonds of the State of Georgia, which are now held by him, subject to the conditions of this act: Nos. 21 to 40, due 1921, for \$5,000 each, making \$100,000; Nos. 41 to 60, due 1922, for \$5,000 each, making \$100,000; Nos. 61 to 70, due 1924, for \$5,000 each, making \$50,000; Nos. 71 to 90, due 1924, for \$5,000 each, making \$100,000; Nos. 91 to 110, due 1925, for \$5,000 each, making \$100,000; Nos. 111 to 120, due 1926, for \$5,000 each, making \$50,000; total, \$500,000.

**SEC. 6. Bonds collateral security for faithful performance of lease; additional security.**—*Be it further enacted,* That the bonds deposited under the requirements of the fourth section shall be regarded merely as collateral security for the faithful performance by the lessee of the terms of the lease contract, and shall not be held as exhaustive of other rights of the state as lessor. And after said bonds have been applied in whole or part, as damage, penalty, or forfeiture for any act done or omitted to be done, or any violation of the terms of the lease as herein provided, the original party to the lease, whether corporation, person, or persons, as well as the company chartered hereby as Western & Atlantic Railroad Company, shall be liable further to the State of Georgia for any damage caused the state by any breach or forfeiture, under said contract, of this act. In addition to the deposit as security required by the terms of this act, and the personal and corporate liability imposed by the terms of this act, the legislature may at any time require the lessee or lessees to enter into bond with good security, to be approved by the governor and attorney-general, in such sum, not to exceed five hundred thousand dollars, as the legislature may deem necessary to fully protect the interest of the state.

**Additional security.**



**SEC. 7. Betterments; road to be kept first-class; examiners; lessee to report to legislature, when.**—*Be it further enacted*, That when the road is leased under the provisions of this act, it shall be, and is hereby, distinctly provided that all improvements, betterments, or ameliorations whatever, shall be made at the expense of the lessee or lessees, and no claim for such will ever be entertained or allowed by the state. All attachments to the realty shall be considered permanent. It is also distinctly provided that the lessee or lessees shall, at all times, keep the said road in the condition of first-class roads in Georgia, safely and expeditiously to carry on the business of said road. The governor of the state shall have the power to appoint a board of examiners, to consist of three, **Board of examiners.** and the board of examiners so appointed shall have the power to subpoena witnesses and examine them, and also the power to require the production of books, contracts, and any and all kinds of writings that may throw light or information upon the subject-matter or matters under investigation. And if, by report of the examiners appointed by the state's authorities, it shall appear that the lessee or lessees have permitted said road to be reduced to a condition below the first-class roads of this state, or any of said property has been lost, consumed, or permanently removed from the state, the lessee or lessees shall be liable for such depreciation or deterioration, or loss, **Lessee liable for deterioration in value.** consumption, or removal, and the governor of the state shall apply a sufficiency of the bonds deposited as security to restore said road to its condition at the date of the aforesaid previous examination; *Provided*, That before proceeding under and by virtue of any report of said examiners, to apply any of **Proviso.** the bonds deposited by said company as security, the governor shall cause a copy of such report to be delivered to the president, or some other officer of said company, and the company shall have ten days from the receipt of such copy within which to file objections to said report with the governor; and, upon such objections being filed, the governor and the company shall appoint two men each, and these four shall appoint a fifth man, all of said men to be railroad experts, and none of them con-

needed with said railroad, nor with any railroad interested therein, and said five men, so selected as aforesaid, shall constitute a board of arbitration, who shall examine the matters referred to in the report and exceptions, and shall make up an award, which shall be final and conclusive in the premises. And it shall be the duty of said lessees, on or before the first day of October of each and every year, to make and file with the governor of this state an official report of the condition of said Western & Atlantic Railroad and all the property connected therewith, which report shall contain and set forth the following facts: What improvements have been made by the lessees, or additions made to the track, bridges, depot buildings, or side tracks; what rolling stock has been purchased by said road; the amounts received from passengers and freights; the expenses incurred in the operating of said road; the amount of freight carried over said railroad and the rates charged for the same; and any and all other facts necessary to the furnishing complete information of the condition and operations of said railroad for each year during said lease.

The present Western & Atlantic Railroad Company is liable for continuing a nuisance after notice, though it was originally placed there by the former company. 93 Ga., 561.

**SEC. 8. Inventory; lessee incorporated, name, general powers.**—*Be it further enacted,* That the governor shall appoint five citizens of this state, of high character, two of whom are experts in railroad management, who, after making oath that they are neither directly or personally connected or interested in the present or future lease of said road, except as citizens of this state, shall proceed, sixty days before the expiration of the present lease, to examine the road and its houses, workshops, depots, and rolling stock, and all other appurtenances, of every character, and shall make out, in writing, a schedule or inventory of the same, carefully describing and setting forth the true condition of the road and its rolling stock and appurtenances, and property of every character, with the value thereof, which shall be recorded in the office of

Board of  
arbitration.

Official re-  
ports as to  
condition of  
property.

Inventory to  
be made before  
present lease  
expires.

the secretary of state, and filed in the executive office, and a copy furnished the lessees under this act; and as soon as the terms of the lease are agreed upon between the governor and lessee or lessees, and the name or names of the company or corporation, or parties leasing the road and its appurtenances, has been entered on the minutes of the executive department as the persons or corporations proposing to take said lease, and the acceptance of the proposition by the governor shall also have been recorded, and a receipt given to the state by the lessees under this act for all the property turned over to them, the persons, associations, or corporations accepted as lessees under this act, if not already a corporation created under the laws of Georgia, shall, from the time of such acceptance and until after the final adjustment of all matters springing out of this lease contract, become a body politic and corporate under the laws of this state, under the name and style of the Western & Atlantic Railroad Company, which body corporate shall be operated only from the time of their taking possession of said road as lessees; and it shall have the power to sue and be sued on all contracts made by said company, in any county through which the road runs, after the execution of said lease, or for any cause of action which may accrue to said company, and to which it may become liable. After said lease is executed, it shall have power to make all rules, by-laws, and regulations for the government of said company, and for the working and management of said road, which are necessary and usual with railroad companies in this state, and which are not in conflict with the constitution and laws of this state or the United States. The principal office and place of business of said company shall be in this state; *Provided*, That nothing in this act shall be construed as an amendment of the charter of any corporation which may lease said road; *Provided further*, That if said lessee is a corporation already incorporated under the laws of Georgia, it shall operate said railroad as the "Western & Atlantic Railroad," and such lessee may be sued on any contract or cause of

Lessees to become a corporate body; name.

General powers.

Principal office.

Corporate name, when.



action arising out of said lease for the operation of said road, in any county through which said road runs.

1. **Incorporation.**—The Nashville, Chattanooga & St. Louis Railway, under the above section, became incorporated as to the line of this road in Georgia under the name and style of the "Western & Atlantic Railroad Company." Under that name it must now be sued, or a nonsuit will be entered. 91 Ga., 24.

2. An act incorporating a company is a public law, and need not be given in evidence. 74 Ga., 509.

**SEC. 9. Freight and passenger tariffs, lessee to be held harmless against bonds on road.**—*Be it further enacted*, That said lease company shall be subject to, and required to observe and obey, all just and reasonable rules, orders, schedules of freight and passenger tariffs as may be prescribed by the laws of this state and the railroad commission of this state; and said lease company shall charge no greater rate per ton per mile on through freight on said railroad than the local rate allowed and fixed on similar freights by the railroad commission for said railroad; and said company shall not discriminate against any railroad company or persons, or parties or places having business connections or relations with said Western & Atlantic Railroad, but all schedules of freight and passenger tariffs shall be so arranged as to give all connecting roads and all places and persons having business relations with said road a fair and equal chance, doing equal justice between them in everything connected with the management of said road; and that said lease company shall have the exemptions, privileges, immunities, rights, and guarantees, and shall be subject to the same laws, liabilities, disabilities, and public burdens on other railroad companies in this state, and no more, in all cases where this act is silent and has made no provision on this subject. *And it is further enacted*, That the state pledges her faith to redeem all bonds on said road which have been  
**Bonds.** issued by the state—and now recognized by the state—and on which interest is now being paid, together with all interest coupons as they fall due, and to save the lessees harmless against said bonds and coupons.

**SEC. 10. Existing contract ; how road and rolling stock to be received and accounted for ; forfeiture of lease.**—*Be it fur-*

*ther enacted*, That the said lease shall in no way interfere with the contract now existing between the state and the present lessees; and the lessees, under this act, shall receive the roadbed in its condition at the time the lease contract is made, ordinary and natural wear and tear, until the expiration of the present lease, excepted; and the governor shall appoint three expert railroad men, not connected with the lease company or any corporation having shares therein, whose duty it shall be to examine the roadbed and its appurtenances within ten days prior to the opening of the bids, and make a full and complete report of the condition of the same to the governor, to be filed in the office of the secretary of state, which report shall be taken as the true condition of the road at that time. In the event the road is re-advertised for lease, a like examination and report shall be made prior to the opening of the bids, together with that part of the personalty received by the lessees, except old iron, not in use, wood and cross-ties, and material in car shops and machine shops, and which is shown by the inventory of file in the secretary of state's office, taken under the lease act of 1870, and supplementary inventory of 1872, subject to the right of the present lessees, at option, to deliver the property therein specified, if in as good condition as when received, or property of like kind and character, in a like condition, or of increased capacity, or, upon failure to do so, then to account for the full value of the same in money. The money so received shall be reinvested in engines or cars by said lessees, acting with the concurrence of a competent and disinterested railroad expert, to be appointed by the governor. Said property so purchased shall belong to the state, subject to the provisions of the lease, and an inventory of the same, signed by the lessees and the said railroad expert, shall be filed with the secretary of state; *Provided*, That the state shall not be bound, nor the rights of the state limited, by any statements or conclusions made in said report of said arbitration, of date December 19, 1872. In case the lessee or lessees under this act shall fail or refuse to pay whatever sum

Existing  
contract.Reports as to  
condition of  
road.In event road  
is re-adver-  
tised.

Proviso.

**Damages for failure to pay monthly rental.**

may be agreed upon, according to the provisions of this act, as a monthly rental into the treasury of the state, within twenty days after the end of the month, the lessee or lessees shall forfeit to the state six months' rental as damages, to be collected out of the bonds deposited under this act. For failing or refusing to comply with

**Forfeiture of lease.**

said lease contract, the governor, at his option, may declare the lease forfeited, and take immediate possession of said road and its appurtenances; and if any resistance is offered by the lessee or lessees, it shall be the duty of the sheriffs of all the counties in this state through which said railroad runs to aid the governor with the *posse comitatus* of their respective counties, to take the possession and expel the lessee or lessees who have failed or refused to make payments when due, as aforesaid; and in ten days after he has terminated the lease and taken possession of the road for the state, the governor shall apply the remaining bonds deposited as damages on account of the forfeiture as far as the same may go.

The rolling stock and personal property received was itemized and received in full. The list is herein to be found in the next chapter.

**SEC. 11. Taxes, subletting prohibited, exception, improvements belong to state.**—*Be it further enacted*, That said lessee

or lessees shall be required to pay all taxes and assessments

upon the property of this state in the State of Tennessee, and in Georgia upon all property owned or

**Taxes.**

controlled by them, not received from the state, and such further taxes upon their income as is now paid by the Central Railroad & Banking Company, and shall not sublet said road, or any part thereof, to any other company, corporation, or party, provided the lessees may sublet any property not needed

**Provide as to subletting.**

for railroad purposes; *Provided*, That, in the opinion of the attorney-general, this can be done without invalidating the state's title thereto; and all improvements put on said property by the lessees or their tenants, shall belong to the state at the expiration of said lease.

**1. Subletting prohibited; may mortgage, when.**—The above section, prohibiting subletting in no manner prevents the mortgage or assignment of the entire leasehold interest. It is frequently important to de-



termine whether an act of the lessee is, in law, an assignment or a sub-leasing. It is uniformly held that if the *entire* leasehold interest is alienated, it is an *assignment*. If it is for a period which is to expire before the expiration of the original lease, it is a subleasing. Burton on Real Property, sec. 889; 1 Wash. on Real Property, sec. 510; 108 Mass., 558. See, also, 53 Penn. St., 20 (1866); 47 Minn., 189; 102 N. Y., 608.

A mortgage or assignment of the *entire* leasehold interest is in no manner a violation of a covenant not to sublet. The authorities are clear upon this subject. 27 Barb. (N. Y.), 415; 25 N. J. L. (1 Dutch.), 291, 285; 33 N. J. D. (4 Vr.), 254; 47 Minn., 189; 15 L. R. A., 236; 16 Johns., 159; 1 Wood on Landlord and Tenant, secs. 258, 327; Taylor on Landlord and Tenant, sec. 16; 129 Ill., 318-327. See, also, 14 Lea (Tenn.), 92; 9 Lea, 1.

Hence, there was nothing in the above section to prevent the Nashville, Chattanooga & St. Louis Railway from mortgaging its *entire* leasehold interest in this road, which it did, together with the \$500,000 of bonds deposited with the treasurer of Georgia, to secure an issue of \$650,000 of bonds known as the "Western & Atlantic Railroad Income Bonds." Said bonds were issued by the Nashville, Chattanooga & St. Louis Railway to reimburse itself for moneys expended by it in repairing and renewing the bridges, trestles, tracks, etc., of said Western & Atlantic Railroad.

2. **Taxes, how paid.**—The above section also provides that the company shall pay "such further taxes upon its *income* as is now paid by the Central Railroad & Banking Company." The latter company was incorporated by Acts Ga., 1833. The seventh section of its charter provided that it should pay one-half of one per cent. on its *net income*.

**SEC. 12. Rent, how paid; shops to remain in state; principal office.**—*Be it further enacted*, That all payments required to be made under said lease shall be made in gold, or its equivalent. The railroad shops of the Western & Atlantic Railroad shall not be removed beyond the state of Georgia, and the principal office of the Western & Atlantic Railroad shall be within the limits of the State of Georgia.

**SEC. 13. Governor to operate road, when.**—*Be it further enacted*, That, in the event of a failure to lease the Western & Atlantic Railroad, or in the event of a forfeiture of the lease at any time, the governor shall operate said road under the provisions of the laws of this state until a lease can be made under this or any subsequent act of the legislature.

**SEC. 14. Conflicting laws repealed.**—*Be it further enacted*, That all laws and parts of laws in conflict with this act be, and the same are hereby, repealed. (Acts Ga., 1889, p. 362; approved November 12, 1889.)

## CHAPTER XXXI.

LEASE CONTRACT, LIST OF ROLLING STOCK, ETC., RECEIVED,  
AND ACTS GEORGIA AND TENNESSEE RELATING TO  
WESTERN & ATLANTIC RAILROAD.

## LEASE CONTRACT.

STATE OF GEORGIA, )  
County of Fulton. )

WHEREAS, The undersigned, John B. Gordon, the governor of said state, did, in strict compliance with the act of the general assembly of said state, entitled "An act to provide for the lease of the Western & Atlantic Railroad, to define the rights, powers, liability, and duty of the lessee, and for other purposes therewith connected," which act was approved November 12, 1889, made an advertisement, which was a definite proposal for bids, as authorized by said act, for the lease of the said the Western & Atlantic Railroad, together with all its houses, workshops, rolling stock, depots, and appurtenances of every kind and character, being the property of said state, and which said act authorizes the governor of said state to lease as therein provided, said bids to be submitted in writing to said governor on or before the twenty-seventh (27th) day of June, eighteen hundred and ninety (1890); and,

WHEREAS, On or before said last named date two bids only were so submitted, one of which was by the Nashville, Chattanooga & St. Louis Railway, a corporation created by the laws of the State of Tennessee, but not a corporation created by the laws of the State of Georgia, proposing and offering to lease the said Western & Atlantic Railroad and the other property hereinbefore mentioned, under and in accordance with the provisions of the said act, approved, as aforesaid, on the twelfth (12th) day of November, eighteen hundred and eighty-nine (1889), for a term of twenty-nine (29) years, and to pay there-

for the sum of thirty-five thousand and one dollars (\$35,001) each month during said term, as required by said act; and,

WHEREAS, After the said governor had given due notice of the time and place of the opening and examination of the bids, in strict conformity to the requirements of said act, the governor, comptroller-general, secretary of state, treasurer, and attorney-general of said state opened and examined said bids, at the time and place so designated, in the presence of the public and the bidders, or their legal representatives, to wit, at eleven (11) o'clock in the forenoon of the twenty-eighth (28th) day of June, eighteen hundred and ninety (1890), at the capitol, in the city of Atlanta, Georgia, and then adjourned over until the following Monday, to wit, until the thirtieth (30th) day of June, eighteen hundred and ninety (1890), at four (4) o'clock in the afternoon, and then assembled again, and then and there, at the said capitol of the State of Georgia, at 4 o'clock in the afternoon on the said thirtieth (30th) day of June, eighteen hundred and ninety (1890), did formally, and in writing, accept the said bid of the said the Nashville, Chattanooga & St. Louis Railway, which written acceptance was, on the same day, ordered by the governor to be entered on the the minutes of the executive department, together with both of the bids submitted as aforesaid, and the papers accompanying said bids, and was, together with accompanying papers as aforesaid, entered on the minutes in said department in pursuance of said order; and,

WHEREAS, Prior to the opening of said bids, the governor appointed three expert railroad men, to wit, Eben Hillyer, W. L. Clark, and John Screven, not connected with the lease company between which and the said State of Georgia a lease of said railroad and the other property connected therewith now exists, or with any corporation having shares in said lease, who did, within ten days prior to the opening of said bids, examine the roadbed of the said the Western & Atlantic Railroad and its appurtenances, and made a full and complete report of the condition of the same to the governor, as required by the first clause or sentence of the tenth section of said act, which report



was filed, in accordance with said section, in the office of the secretary of the state, on the twenty-sixth (26th) day of June, eighteen hundred and ninety (1890), and is taken by the parties hereto as showing the true condition of said railroad and the appurtenances thereof, which are mentioned and the condition of which is stated in said report, at the time the said report was filed as aforesaid:

Now, this indenture, made and entered into on this the nineteenth (19th) day of July, eighteen hundred and ninety (1890), between the said John B. Gordon, governor of the said State of Georgia, and for and in behalf of said state, as party of the first part, and the said the Nashville, Chattanooga & St. Louis Railway, a corporation as aforesaid, as party of the second part, witnesseth: That the said party of the first part, under and by authority of the said act, approved November twelfth (12th) eighteen hundred and eighty-nine (1889), and in pursuance thereof, in consideration of the premises, and especially of the agreement of the party of the second part to pay into the treasury of the said state, in the city of Atlanta, Georgia, the sum of thirty-five thousand and one dollars (\$35,001) monthly, as required by said act, and of the deposit with the treasurer of said state recognized valid bonds of the State of Georgia of the par value of five hundred thousand dollars (\$500,000), as required by said act, and particularly by the fourth and fifth sections thereof, as well as in consideration of all the other obligations and duties to be performed under the provisions of said act by the said party of the second part, does hereby lease to the said party of the second part, viz., to the Nashville, Chattanooga & St. Louis Railway, the said the Western & Atlantic Railroad (a railroad running from the city of Atlanta, in the State of Georgia, to the city of Chattanooga, in the State of Tennessee), together with all its houses, workshops, rolling stock, depots and appurtenances of every kind and character, being the property of the State of Georgia, and which the said act authorizes the governor of said state to lease under the provisions thereof, for a term of twenty-nine (29) years, beginning from and immediately after the termination

of the lease contract now existing (which was executed on the twenty-seventh (27th) day of December, eighteen hundred and seventy (1870), and ends twenty (20) years from that date.) Said lease is made to said party of the second part with all the rights, powers, and privileges conferred on said lessees by said act, approved November twelfth (12th) eighteen hundred and eighty-nine (1889), and subject to all the requirements, obligations, and duties thereby exacted of said lessee, and which the said party of the second part hereby agrees faithfully to perform in accordance with the provisions of said act; the said party of the second part also specially agrees to pay into the treasury of the said State of Georgia, each month during the continuance of said lease, the sum of thirty-five thousand and one dollars (\$35,001) in gold, or its equivalent, as required by said act.

It is further stipulated and agreed by the parties hereto, that this lease is made by the said party of the first part, and accepted by the said party of the second part, under and subject to all the provisions of the said act of the general assembly, approved, as aforesaid, on the twelfth (12th) day of November, eighteen hundred and eighty-nine (1889), and that both of the parties hereto, and all persons or corporations who are, or shall be, their lawful successors by virtue of said act, are, and shall be, bound in every particular by the provisions of said act, and that if said act conflicts in any respect with this contract, said act is to govern and control.

In witness whereof, the said John B. Gordon, governor of the State of Georgia, has hereunto attached his official signature and the great seal of said state; and the said the Nashville, Chattanooga & St. Louis Railway has, by its president, John W. Thomas (who is authorized by said corporation so to do), signed and executed this contract and attached the corporate seal of said corporation, on the said nineteenth (19th) day of July, A.D. eighteen hundred and ninety (1890).

Executed in duplicate in presence of

PHILIP COOK,

*Secretary of State.*

JOHN B. GORDON,

*Governor.*

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

J. H. AMBROSE, *Secretary.*

By J. W. THOMAS, *President.*

**LIST OF ROLLING STOCK AND OTHER PERSONAL PROPERTY  
ACTUALLY RECEIVED FROM STATE OF GEORGIA  
BY NASHVILLE, CHATTANOOGA & ST.  
LOUIS RAILWAY.**

List of passenger, baggage, and postal cars received from the State of Georgia  
by the Nashville, Chattanooga & St. Louis Railway (lessee).

NUMBER.	PASSENGER CARS.	VALUE BY STATE.	VALUE BY LESSEE.
1	Built by W. & A. R. R. Co. Sept. 1858	\$ 1,600	\$ 1,500
2	Rebuilt " " June, 1888	3,000	2,500
4	" " " June, 1888	3,000	2,500
7	" " " July, 1879	1,650	1,500
9	Built " " Nov. 1880	1,750	1,500
10	Rebuilt " " Nov. 1888	3,100	2,500
11	" " " Mar. 1876	1,450	1,200
15	" " " Mar. 1881	1,750	1,500
16	" " " Nov. 1874	1,450	1,200
18	" " " Dec. 1888	3,150	2,500
19	" " " Dec. 1888	3,150	2,500
21	Built by Jackson & Sharp, Sept. 1880	2,000	1,700
22	" " " Sept. 1880	2,000	1,700
23	" W. & A. R. R. Co. Oct. 1880	2,000	1,700
24	" " " Oct. 1880	2,000	1,700
25	Bought by W. & A. R. R. (2d h'd) Sep. 1881	950	750
27	Built by Ohio Falls Co. May, 1884	3,000	2,500
28	" " " May, 1884	3,000	2,500
29	" " " May, 1884	3,000	2,500
	Car Atlanta	3,600	3,000
BAGGAGE CARS.			
1	Rebuilt by W. & A. R. R. Co. Oct. 1878	1,200	1,000
2	" " " Nov. 1878	1,200	1,000
3	" " " Sept. 1889	2,250	2,500
4	Built " " Nov. 1889	2,250	2,500
5	" " " Sept. 1881	1,750	1,250
6	" " " Sept. 1881	1,750	1,250
7	" " " May, 1885	2,050	1,500
COMBINATION CARS.			
6	Rebuilt by W. & A. R. R. Co. June, 1885	2,150	1,750
12	" " " May, 1881	1,300	1,000
14	" " " Apr. 1881	1,300	1,000
NAME. POSTAL CARS.			
Gate City	Rebuilt by W. & A. R. R. Co. Aug. 1879	1,400	750
B. M. Turner	" " " Aug. 1879	1,400	750
Total		\$66,600	\$55,200





List of the 455 Box Cars received from the State of Georgia by the Nashville, Chattanooga & St. Louis Railway (Lessee), December 27, 1890.

NUMBER.							
11	2228	2662	3424	3494	3661	12630	12916
12	2230	2663	3425	3495	3662	12631	12917
15	2231	2664	3426	3496	3663	12633	12918
23	2232	2665	3427	3498	3664	12634	12919
51	2233	2666	3428	3499	3665	12636	12920
54	2234	2667	3429	3600	3667	12637	12921
74	2236	2668	3430	3602	3668	12638	12923
85	2238	2669	3431	3603	3669	12639	12924
87	2242	2671	3432	3604	3670	12640	12925
109	2243	2672	3433	3605	3671	12641	12926
145	2244	2673	3434	3606	3672	12642	12927
185	2245	2674	3435	3607	3674	12643	12928
215	2246	2675	3436	3608	3675	12645	12929
216	2247	2676	3438	3609	3676	12647	12930
228	2248	2677	3439	3610	3678	12869	12931
251	2249	2678	3440	3611	3679	12870	12932
269	2250	2679	3441	3612	3680	12871	12933
272	2253	2680	3442	3613	3682	12872	12934
291	2254	2681	3443	3614	3683	12873	12935
295	2256	2682	3444	3615	3685	12874	12936
297	2257	2683	3445	3616	3686	12875	12937
300	2259	2684	3448	3618	3688	12876	12938
331	2260	2685	3450	3619	3690	12877	12939
337	2261	2686	3451	3620	3691	12878	12940
338	2262	2687	3452	3622	3692	12879	12941
343	2265	2688	3453	3624	3693	12880	12942
390	2267	2689	3455	3626	3694	12881	12943
396	2268	2690	3456	3627	3685	12882	12944
401	2269	2691	3457	3628	3699	12883	12945
418	2270	2693	3458	3629	12600	12884	12946
424	2272	2694	3459	3630	12601	12885	12947
428	2275	2695	3460	3631	12602	12887	12948
439	2278	2696	3461	3632	12603	12888	12949
453	2279	2697	3462	3634	12604	12889	12951
464	2281	2698	3463	3635	12605	12890	12952
471	2283	2699	3466	3636	12606	12891	12953
473	2284	3400	3467	3637	12607	12892	12954
484	2285	3401	3468	3638	12608	12893	12955
492	2288	3402	3470	3639	12609	12894	12956
506	2289	3403	3471	3640	12610	12895	12957
515	2292	3404	3472	3641	12611	12896	12959
535	2294	3405	3473	3642	12612	12897	12960
561	2295	3406	3474	3643	12613	12898	12961
566	2296	3407	3475	3644	12614	12900	12962
2200	2297	3408	3476	3645	12616	12901	12963
2202	2299	3409	3477	3646	12617	12902	12964
2205	2650	3411	3478	3647	12618	12903	12965
2206	2652	3412	3479	3648	12619	12904	12968
2211	2653	3414	3480	3649	12620	12905	12969
2213	2654	3415	3481	3651	12622	12906	12970
2216	2655	3417	3482	3653	12623	12907	12971
2219	2656	3418	3484	3654	12624	12908	12972
2222	2657	3419	3486	3656	12625	12909	12973
2224	2658	3420	3487	3657	12626	12910	12974
2225	2659	3421	3488	3658	12627	12911	12976
2226	2660	3422	3491	3659	12628	12912	12977
2227	2661	3423	3492	3660	12629	12913	

List of 120 Coal and 100 Flat Cars received from the State of Georgia by the Nashville, Chattanooga & St. Louis Railway (Lessee).

NUMBER.					
1404	1491	1580	1688	1747	1819
1405	1495	1581	1689	1748	1820
1409	1496	1584	1690	1749	1821
1412	1498	1585	1695	1750	1823
1415	1499	1587	1696	1751	1828
1419	1503	1589	1697	1754	1830
1420	1505	1592	1698	1757	1832
1422	1508	1598	1703	1759	1833
1426	1511	1599	1707	1760	1835
1432	1513	1601	1710	1761	1837
1435	1515	1606	1711	1765	1838
1437	1517	1608	1713	1766	1839
1443	1519	1611	1714	1767	1844
1444	1521	1616	1715	1769	1846
1448	1522	1619	1718	1771	1849
1449	1523	1622	1719	1773	1853
1452	1524	1623	1720	1776	1854
1453	1530	1627	1721	1777	1855
1456	1539	1630	1722	1778	1857
1462	1540	1634	1724	1779	1858
1463	1541	1636	1726	1783	1860
1464	1542	1638	1729	1784	1863
1466	1543	1640	1730	1786	1865
1468	1547	1642	1731	1788	1870
1471	1548	1647	1732	1789	1871
1472	1550	1653	1733	1800	1877
1473	1552	1657	1734	1801	1879
1474	1553	1665	1736	1802	1885
1475	1556	1670	1737	1803	1887
1477	1557	1672	1738	1807	1888
1480	1559	1674	1739	1808	1889
1482	1561	1677	1740	1810	1890
1483	1563	1678	1741	1811	1893
1484	1567	1681	1742	1813	1897
1488	1573	1682	1744	1816	1905
1489	1577	1684	1745	1817	1924
1490	1579	1685	1746		

List of 15 Stock Cars received from the State of Georgia by the Nashville, Chattanooga & St. Louis Railway (Lessee).

NUMBER.					
1301	1315	1320	1330	1332	1339
1304	1316	1327	1331	1338	1342
1307	1319	1328			

One Wrecking Car.

List of Machine Shop Tools to be Delivered to the State by the Lessees.

- No. 2. 1 single head driving wheel lathe.
3. 1 axle lathe, 33-inch swing, 13-foot bed, back gear, with tools.
4. 1 engine lathe, 20-inch swing, 14-foot bed, back gear, with tools.
5. 1 engine lathe, 20-inch swing, 8½-foot bed, back gear, with tools.
6. 1 engine lathe, 20-inch swing, 8½-foot bed, back gear, with tools.
7. 1 engine lathe, 16-inch swing, 7½-foot bed, back gear, with tools.
8. 1 engine lathe, 12-inch swing, 5-foot bed. (Never used by lessees.)



- No. 1. 1 planer 36 inches wide, 12 feet long, 3 heads, all tools; substituted for No. 1 screw planing machine, condemned.
2. 1 compound planer, with chuck, table, and tools.
3. 1 shaping machine, complete, and tools.
4. 1 shaping machine, complete, and tools.
- 1 boring mill.
- 1 boring mill, with endless chain twist.
- 1 grindstone, shaft and pulley, complete.
- 1 endless chain twist, lift 2,500 pounds.
- 1 endless chain twist, lift 500 pounds.
- 1 pattern maker's lathe.
- 12 vises, 9 old and 3 new, in place of original 9.
- No. 1. 1 drill press, complete, back gear, all tools.
3. 1 drill press, complete, 20-inch.
- Lot of reamers, taps and dies, rose bits, counter sinks, etc.
- 5 hydraulic jacks, 2 of 20 tons, 3 of 15 tons lift.
- 1 bolt cutter, with full set of taps and dies, cut  $\frac{1}{8}$  to  $1\frac{1}{4}$  inches.
- 176 feet cold rolled shafting.
- 46 pulleys.
- 18 hangers.
- 16 couplings.

#### In Blacksmith Shop of Machine Department.

6 Forges, complete, with tools, etc. 4 Castiron forms. 7 Anvils. 1 Vise. 1 Blower. 1 Spring furnace, oil tub, etc.

#### Coppersmith Tools.

1 Coppersmith forge. 1 Set stocks and dies. 1 Bench vise, 6-inch jaw. 3 Mandrels. 1 Pot.

#### Boiler Shop Tools.

1 Boiler shears. 2 Boiler punches, No. 5. 1 Boiler rolls. 1 Forge, with tools. 1 Vise, 8-inch jaw (box).

#### Paint Shop.

1 Paint grinder.

#### Machinery, etc., in Car Department.

1 engine and boiler, 40-horse power, with pump. 2 wood planers. 2 saw tables. 6 circular saws. 1 tenon machine. 2 pairs scales. 1 mortise machine. 1 gumming machine. 1 axle lathe. 1 car-wheel boring mill. 1 slide lathe. 1 sash sticker. 1 150-ton hydraulic wheel press, substituted for old wheel press condemned and for deterioration of machinery (this press cost \$1,100). 1 grindstone. 1 wood lathe. 1 jig saw. 2 15-ton jacks. 7 screw jacks. 1 old 100-ton hydraulic wheel press. 3 stoves. 12 work benches (15 originally). 2 hand cars. 2 wheelbarrows. 1 drill press. Lot of drills, rose bits, bolt cutters, taps, and hubs. 1 cut-off saw. 2 patent pulleys. 1 fan. 1 grindstone, shaft, etc. 1 pair scales. 3 vises. 2 ladders. 1 stove. Original shafting and pulleys (to which add new shafting, hangers, pulleys, and couplings bought by lessees). 1 nut machine. Lot of old taps. 5 anvils (originally 8). 6 sledges (originally 10).

6 forges and tools complete for 4 forges. Full set of turner's tools. Lot of assorted paints and paint brushes. 1 paint mill. 9 putty knives. 1 old stove. 1 old paint mill.

List of Furniture in the General Offices of the Western & Atlantic Railroad at Atlanta, to be Delivered to the State.

22 desks. 14 small tables. 7 large tables. 6 pigeon-hole cases. 4 wardrobes. 6 iron safes. 8 book-racks and cases. 1 clock. 7 copying presses. 47 chairs. 3 water coolers. 9 water buckets. 7 coal scuttles. 4 coal shovels. 2 coal tongs. 7 waste baskets. 37 inkstands. 2 call bells. 13 hand stamps. 8 wash basins. 4 mirrors. 19 spittoons. 8 R. R. maps. 4 high stools. 1 stove. 5 feather dusters. 3 settees.

Furniture in Office of Master Mechanic, Atlanta.

1 foreman's desk and stool. 1 water cooler. 1 letter press. 1 small wooden case. 1 large desk. 1 small desk. 2 stools. 1 table. 1 cupboard. 1 clock. 1 chair. 1 desk for master mechanic. 1 steam gauge tester. 1 coal scuttle. 2 poker. 1 wash basin. 2 frames for statements. 1 broom. 1 duster.

List of Office Furniture at Stations on Western & Atlantic Railroad to be Delivered to the State.

*Smyrna*.—1 desk, 1 scales, 1 table, 1 truck.

*Marietta*.—2 desks, 1 local ticket case, 1 through ticket case, 2 tables, 12 tables, 1 settee, 1 clock, 1 mirror, 1 iron safe, 1 scales, 4 trucks.

*Kennesaw*.—1 desk, 3 chairs, 1 scales, 1 small ticket case.

*Ackworth*.—1 desk, 6 chairs, 1 settee, 1 clock, 1 small table, 1 small ticket case, 1 platform scales, 1 truck.

*Allatoona*.—1 desk, 2 chairs, 1 small ticket case, 2 trucks (only one on hand), 1 small safe (not on hand).

*Cartersville*.—1 desk, 5 chairs, 1 table, 1 settee, 1 ticket case, 1 scales, 2 trucks.

*Stegalls* (now *Emerson*).—4 chairs, 1 desk, 1 truck, 1 scales.

*Cass*.—1 desk, 5 chairs, 1 table, 1 settee, 1 ticket case, 1 scales, 2 trucks.

*Kingston*.—2 desks, 2 small tables, 1 small safe, 1 local ticket case, 6 chairs, 1 clock, 1 mirror, 1 through ticket case, 1 platform scales, 3 trucks.

*Adairsville*.—1 desk, 1 settee, 1 scales, 2 chairs (originally 6), 1 clock, 2 trucks, 1 local ticket case.

*Cathoun*.—1 desk, 1 clock, 6 chairs, 1 settee, 1 table, 1 local ticket case, 1 scales, 2 trucks.

*Resaca*.—1 desk, 4 chairs, 1 small ticket case, 1 scales, 1 truck.

*Tilton*.—1 desk, 1 ticket case, 1 scales, 1 truck.

*Dalton*.—2 desks, 1 local ticket case, 3 chairs, 1 small iron safe, 2 scales, 6 trucks.

*Tunnel Hill*.—1 desk (short), 3 chairs (originally 6), 1 settee (short), 1 table (short), 1 mirror (short), 1 local ticket case, 1 scales (originally 2), 2 trucks.

*Ringgold*.—1 desk, 3 chairs (originally 6), 1 settee (short), 1 local ticket case, 1 small table (short), 2 trucks, 1 scales, 1 clock (short).

*Graysville.*—1 local ticket case, 1 scale, 1 truck.

*Chickamauga.*—1 desk, 4 chairs, 1 settee (short).

*Chattanooga.*—7 desks, 1 desk (warehouse), 1 case common shelves, 16 trucks, 2 tables, 1 iron safe, 1 letter press, 1 baggage truck, 1 small platform scales, 2 floor scales, 1 settee (short), 1 small ticket case, 5 common chairs (originally 12), 1 through ticket case.

ATLANTA, GA., March 26, 1891.

As the representative of the Nashville, Chattanooga & St. Louis Railway, the present lessee of the Western & Atlantic Railroad, I agree to take from the State of Georgia the articles described in the inventories hereto annexed, which articles are ready to be turned over by Joseph E. Brown and E. B. Stahlman, receivers of the Western & Atlantic Railroad Company, to the State of Georgia; and I agree that the valuation placed upon them is correct, which valuation aggregates \$33,093.60.

[SIGNED.]

J. W. THOMAS,

*President Nashville, Chattanooga & St. Louis Railway.*

#### MACHINE SHOP.

1 double driving wheel lathe .....	\$3,000 00
1 radial drill press .....	450 00
1 driving wheel press .....	900 00
7 bench vises, \$5 .....	35 00
1 14 x 20 40-horse power engine .....	800 00
4 cast iron stoves .....	20 00
1 set spiral fluted reamers .....	30 00
1 set twist drills .....	50 00
1 set $\frac{3}{8}$ taps .....	1 50
1 set $\frac{5}{8}$ taps .....	2 50
1 set $\frac{3}{4}$ taps .....	3 00
1 set $\frac{7}{8}$ taps .....	4 50
1 set 1-in. taps .....	5 00
1 set 10-thread taps .....	10 00
1 wood level .....	1 00
1 iron level .....	1 25
2 40-ton hydraulic jacks, \$100 .....	200 00
2 30-ton hydraulic jacks, \$75 .....	150 00
6 15-ton hydraulic jacks, \$50 .....	300 00
1 emery grinder .....	30 00
4 friction clutch drills .....	30 00
1 cylinder borer .....	150 00
2 steel straight edges, 30 in. long .....	8 00
2 steel straight edges, 16 in. long .....	16 00
Total, machine shop .....	\$6,197 75



## BLACKSMITH SHOP.

1 steam hammer, swedges and dies .....	\$400 00
2 crane hoist, \$15 each .....	30 00
1 bolt header .....	8 00
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Total, blacksmith shop .....	\$438 00

## COPPERSMITH SHOP.

3 pipe cutters .....	\$ 8 00
1 set pipe taps .....	8 00
1 No. 5 bench vise .....	5 00
3 pair gas pipe tongs .....	3 00
2 pair shears .....	3 00
1 set chisels .....	2 00
1 pipe vise .....	5 00
4 soldering irons .....	2 00
2 hammers .....	1 00
4 monkey wrenches .....	2 00
2 open end wrenches .....	1 50
2 spanner wrenches .....	1 00
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Total, coppersmith shop .....	\$41 00

## PATTERN SHOP.

4 benches and screws .....	\$ 28 00
1 universal shaper .....	25 00
1 cross-cut saw .....	1 50
3 open end wrenches .....	1 50
3 box wrenches .....	2 00
3 14-in. monkey wrenches, 50c. ....	1 50
9 12-in. hand screws .....	2 50
5 16-in. hand screws .....	3 50
1 lot of patterns .....	800 00
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Total, pattern shop .....	\$865 00

## FOUNDRY.

2 traveling universal hoists, \$35 .....	\$ 70 00
1 lot of wooden floats, with clamps, and one lot of iron floats, with clamps, weights, etc. ....	150 00
1 wrought iron cupalo, 7,000 lbs. capacity .....	100 00
1 stove .....	4 00
1 pair brass furnaces, crucibles, etc. ....	50 00
1 blower .....	30 00
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Total, foundry .....	\$404 00

## PUMP ROOM.

1 12-inch Worthington steam pump.....	\$ 50 00
1 4-inch Worthington steam pump.....	35 00
1 McGowan hand or power pump.....	25 00
1 6-jaw bench vise .....	5 00
1 set stocks and dies .....	10 00
1 pair chain tongs.....	2 50
2 pairs universal tongs.....	3 00
1 monkey wrench.....	50
1 hammer.....	50
4 sets pump fittings, McGowan pump.....	8 00
1 stove.....	3 50
Total, pump room.....	<u>\$143 00</u>

## PAINT SHOP.

2 50-gallon cans.....	\$ 2 00
1 40-gallon can.....	3 00
30 paint buckets .....	2 00
22 paint brushes .....	12 00
1 duster .....	50
2 putty knives .....	50
1 pallet knife .....	25
4 varnish brushes.....	2 00
1 marble slab .....	50
5 3-gallon zinc buckets.....	75
1 paint press.....	1 50
3 1-gallon cans.....	75
3 brush cans .....	50
6 step ladders, 75c.....	4 50
1 stove.....	5 00
Total, paint shop.....	<u>\$41 25</u>

## CAR SHOPS.

1 band saw machine.....	\$ 150 00
1 sand papering machine .....	75 00
1 Woodworth planer and matcher .....	400 00
1 horizontal boring machine.....	150 00
1 double end axle lathe.....	800 00
1 air pump and piping.....	50 00
1 steam pump in engine room.....	60 00
1 Western differential pulley block.....	10 00
1 portable forge .....	10 00
4 10-ton hydraulic jacks .....	100 00
Total, car shops .....	<u>\$1,805 00</u>

## OFFICE FURNITURE.

*Atlanta General Offices.*—1 iron safe, \$175; 4 clocks, \$65; 9 stoves, \$35.  
Total, \$275.

*Allatoona Depot.*—1 scale, \$15; 1 water bucket and dipper, 40c.; 1 lantern, 35c. Total, \$15.75.

*Kingston Depot.*—3 settees, \$7.50; 5 benches, \$3.25; 1 office lamp, \$2; 2 bracket lamps, \$2.50; 1 platform scale, \$15; 2 baggage trucks, \$30; 2 water buckets, \$1; 3 lanterns, \$1. Total, \$61.75.

*Adairsville.*—2 lamps, \$2.50; 2 lanterns, 70c.; 1 ticket stamp, \$4; 1 round table, \$2; 1 car seals, \$1.50; 2 oil cans. Total, \$11.20.

*Cathoun.*—2 trucks, \$7; 1 ticket stamp, \$4; 1 car seals, \$1.50; 1 white light, 35c.; 7 chairs, \$5.25; 1 red light globe, 10c. Total, \$18.20.

*Resaca.*—1 table, \$2; 1 chair, 75c.; 1 ticket case, \$2; 1 scales, \$15; 1 truck, \$4; 2 lamps, \$3; 2 lamps, 70c.; 1 bench, 75c. Total, \$28.

*Tilton.*—1 truck, \$4; 1 car seals, \$1.50; 1 lamp, 75c.; 2 railroad lanterns, 70c.; 1 ticket stamp, \$4. \$10.95.

*Dalton.*—3 desks, \$18; 1 ticket case, \$25. Total, \$43.

*Graysville.*—1 desk, \$4; 3 chairs, \$2.25; 1 stool, \$1.50; 1 ticket stamp, \$4; 1 bucket and dipper, 40c; 1 coal scuttle, 25c. Total, \$12.40.

Total, line of road, \$476.45.

RECAPITULATION.

Machine shops .....	\$ 6,197 75
Blacksmith shop .....	438 00
Coppersmith shop .....	41 50
Pattern shop .....	865 00
Foundry .....	404 00
Pump room .....	143 00
Paint shop .....	41 25
Car shop .....	1,805 00
Line of road .....	476 45
Total .....	\$10,412 45

Material and supplies as follows:

Car department .....	\$ 8,822 84
Motive power department .....	4,585 70
Road department .....	4,656 10
Storehouse .....	4,616 51

\$33,093 60

RECAPITULATION.

DESCRIPTION.	NUMBER.	VALUE BY STATE.	VALUE BY LESSEE.
Locomotives .....	45	\$ 161,526 00	\$ 109,300 00
Passenger, baggage, postal cars .....	32	66,600 00	55,200 00
Box cars .....	455	91,910 00	68,250 00
Coal cars .....	120	21,000 00	15,000 00
Flat cars .....	100	16,000 00	10,000 00
Stock cars .....	15	4,005 00	2,250 00
Tools and supplies .....		33,093 60	33,093 60
Total .....		\$ 394,134 60	\$ 293,093 60



## ACTS GEORGIA RELATING TO WESTERN & ATLANTIC RAILROAD.

[There are many acts of Georgia relating to the road, but only those are here inserted that will be of possible use to the Nashville, Chattanooga & St. Louis Railway.]

### 1. Pillars of Kennesaw house, in Marietta, allowed to rest on right of way, how.

SECTION 1. *The General Assembly enacts*, That from and after the passage of this act, the superintendent of the Western & Atlantic Railroad be, and he is hereby empowered, and he is hereby directed, to grant to the proprietors of the Kennesaw house, in the city of Marietta, the right to rest the pillars of the veranda to said house, upon the west side thereof, upon the east side of the right of way of said Western & Atlantic Railroad; *Provided*, That said pillars shall not occupy a space of more than three feet in width of said right of way; *And provided further*, That should the necessities of the Western & Atlantic Railroad require the space of ground so occupied, the same shall be taken on the application of the superintendent of said road, notice thereof being given three months previous, by the superintendent of the road, to the proprietor or lessee of the Kennesaw house.

SEC. 2. Repeals conflicting laws. (Acts Georgia 1870, p. 377; approved October 25, 1870.)

### 2. Cincinnati Southern Railroad allowed to run on right of way of Western & Atlantic, how.

SECTION 1. *Be it enacted by the General Assembly of Georgia*, That, whereas, the city of Cincinnati has nearly completed the Cincinnati Southern Railroad, a grand trunk line  
 Preamble. which will be of great benefit to the State of Georgia, forming a most important feeder, and practically an extension of the Western & Atlantic Railroad, which is the property of the state, and giving to our commerce the advantage of a direct and admirable connection with the railway system of the North and West; and,

WHEREAS, Said railroad reaches the Western & Atlantic Railroad at Boyce's station, and for the most of the distance to the termini of the two railroads in Chattanooga, their routes run

parallel to and adjoining each other, a distance of about five miles; and,

WHEREAS, It is to the advantage of both railroads to be able to locate their tracks and works close together, thus saving expense to one in construction, and to both in maintaining the road-bed and facilitating railroad operations, and giving to both railroads the advantage of a stronger and firmer roadbed, through a route subject to overflow by floods in the Tennessee river—

There is hereby granted to the trustees of the Cincinnati Southern Railroad, for the use of said railroad, the use of that portion of the right of way of the Western & Atlantic Railroad between Boyce's station, Tennessee, and the Chattanooga, Tennessee, terminus, that lies westwardly of a line running parallel with, and nine and a half feet westerly from the center of the track of the Western & Atlantic Railroad, so as to admit of laying track, if desired, near enough to the track of the Western & Atlantic Railroad to leave the distance between the centers of the tracks fourteen feet, and between the nearest rails of the two railroads nine feet; *Provided always*, That this grant is subject to the consent and approval of the lessees of the Western & Atlantic Railroad, as to the term of their lease; *Provided further*, That the grade adopted by the said Cincinnati Southern Railroad, along and over the aforegranted right of way, shall always be the same as that of the Western & Atlantic Railroad.

SEC. 2. All acts and parts of acts inconsistent with this act are hereby repealed. (Acts Georgia, 1878-79, p. 218; approved October 8, 1879.)

The Cincinnati Southern Railway is now leased and operated by the Cincinnati, New Orleans & Texas Pacific Railway.

### **3. Dalton & Gadsden Railroad Company allowed to build on right of way of Western & Atlantic Railroad, how.**

SECTION 1. *Be it further enacted*, That his excellency the governor, be, and he is hereby, authorized to grant to the said Dalton & Gadsden Railroad Company the right to construct and build their railroad, for a short distance, upon the right of way of the Western & Atlantic Railroad; *Provided*, The said Dalton & Gadsden Railroad grant similar privileges to the Western &

Atlantic Railroad; *And provided further*, That such grant to said Dalton & Gadsden Railroad Company be not, in the opinion of the governor, incompatible with the public interests.

SEC. 2. Repeals conflicting laws. (Acts Ga., 1859, p. 313; approved December 14, 1859.)

This road subsequently changed its name to Dalton & Jacksonville Railroad.

#### **4. Georgia Western Railroad Company and Polk State Quarry Railroad Company authorized to build on right of way of Western & Atlantic Railroad, how.**

SEC. 2. That his excellency the governor, be, and he is hereby, authorized to grant to the Georgia Western Railroad Company the right to construct and build their railroad on the right of way of the Western & Atlantic Railroad within and adjacent to the city of Atlanta; or, if expedient, to any distance east of the Chattahoochee river, on the same conditions as the grant to the Dalton & Gadsden Railroad Company embraced in an act entitled "An act to authorize the governor to grant certain rights and privileges to the Dalton & Gadsden Railroad Company." (Approved December 14, 1859.)

SEC. 3. That his excellency the governor, be, and he is hereby, authorized to grant to the Polk State Quarry Railroad Company the right to construct and build their railroad on the right of way of the Western & Atlantic Railroad Company within and adjacent to the city of Marietta; or, if expedient, to any distance east of the Kennesaw mountain, on the same conditions as the grant to the Dalton & Gadsden Railroad Company (approved December 14, 1859); *Provided*, The privileges of the right of way granted by this act shall not extend beyond one mile from depot in Atlanta and Marietta, and upon the said roads paying so much for the said right of way as the governor may deem right and proper for the interests of the state. (Acts Ga., 1860, p. 192; assented to December 20, 1860.)

#### **5. G. W. Keith authorized to run mill race under right of way of Western & Atlantic Railroad at a point one mile south of Dalton.**

WHEREAS, G. W. Keith is the owner of a lot of land, num-



ber two hundred and seventy-seven (277), in the twelfth (12th) district of the third (3d) section of Whitfield county, Georgia; and,

WHEREAS, The Western & Atlantic Railroad runs through said lot of land, and owns the right to do so; and,

WHEREAS, Said Keith owns a valuable mill shoal near the right of way of said railroad; and,

WHEREAS, It is necessary, in order to utilize said water power, to run a plank race under the trestle bridge of said road; therefore,

SECTION 1. *Be it enacted by the General Assembly of the State of Georgia*, That said G. W. Keith be allowed to run a plank race, beginning west of the Western & Atlantic Railroad, running in a southeasterly direction, under a trestle bridge of said railroad where it crosses a creek about one mile south of Dalton, Ga.; *Provided*, It can be done without injury to said railroad; *And provided further*, That he procures the written consent of the president of the Western & Atlantic Railroad Company to build said race; *Provided further*, That said plank race shall be discontinued whenever requested by the president of the Western & Atlantic Railroad Company, or by the governor of the State of Georgia.

SEC. 2. Repeals conflicting laws. (Acts Ga., 1877, p. 354; approved February 26, 1877.)

## 6. Gainesville & Western Railroad Company authorized to cross Western & Atlantic Railroad.

SEC. 2. . . . operate a railroad from the city of Gainesville, in Hall county, in a westerly direction through the counties of Hall, Lumpkin, Dawson, Forsyth, Gilmer, Pickens, Cherokee, Cobb, Paulding, Bartow, Whit-<sup>Route.</sup>field or Gordon, crossing the Western & Atlantic Railroad and extending to some point on the East Tennessee, Virginia & Georgia Railroad . . . (Acts Ga., 1884-5, p. 249; approved October 13, 1885.)

There were no terms or conditions imposed as to crossing in act.

**7. Marietta & North Georgia Railroad authorized to build on right of way of Western & Atlantic Railroad from Marietta to marble mills, how.**

WHEREAS, The Marietta & North Georgia Railroad Company is an important feeder to the Western & Atlantic Railroad; and,

WHEREAS, It is and has been necessary for said Marietta & North Georgia Railroad to use (by and with the consent of the lessees of the Western & Atlantic Railroad) a portion of the right of way of the Western & Atlantic Railroad, in order to deliver its freight and passengers to said Western & Atlantic Railroad Company, and is still necessary for the purpose of the same; therefore, be it

*Resolved by the General Assembly of the State of Georgia,* That the charter of the said Marietta & North Georgia Railroad

**Charter of M.  
& N. Ga. R. R.  
amended.**

Company be so amended as to authorize and empower said Marietta & North Georgia Railroad

Company to lay out and construct their road from the city of Marietta, in the county of Cobb, to the marble mills north of said city of Marietta, upon the right of way of the Western & Atlantic Railroad, including that portion now occupied by the said Marietta & North Georgia Railroad within the limits of the city of Marietta, and

**Use of right of  
way author-  
ized.**

to perpetually use and occupy the same for railroad purposes; *Provided*, That said Marietta & North Georgia Railroad Company shall in no way interfere with tracks

**Proviso.**

or right of way now in use by said Western & Atlantic Railroad; *Provided further*, That this shall not apply to more than fifteen (15) feet on the extreme eastern edge or

**Compensation.**

side of said right of way, and that due compensation shall be paid for the same to the state. This

shall be submitted to arbitration, one arbitrator to be selected by the governor and one by said Marietta & North Georgia Railroad Company, and, in case they cannot agree, said arbitrators to select a third, whose decision shall be final; *Provided further*, That the consent of the present lessees of the Western & Atlantic Railroad Company be first obtained to the use of said right of way as aforesaid, and that they consent that any

and all compensation paid to the state therefor shall in no case accrue to them by any contract or lease now in force between them and the state.

*Be it further resolved by the authority aforesaid, That all laws and parts of laws in conflict with this resolution be, and the same are hereby, repealed. (Acts Ga., 1884-85, p. 677 (resolution); approved October 9, 1885.)*

The Marietta & North Georgia Railroad has recently been sold under decree of the United States Circuit Court, and purchased by the Atlanta, Knoxville & Northern Construction Company, which has subsequently been incorporated as the Atlanta, Knoxville & Northern Railway Company.

## **8. Georgia Overland Railway & Improvement Company authorized to cross Western & Atlantic Railroad.**

SEC. 2. . . . to connect with the railroad systems of Alabama, and the steamboat systems of the Coosa river, from the said available point on the boundary line, in a northeasterly direction through either or all of the counties of Floyd, Chattooga, Walker, Gordon, Whitfield, Murray, Gilmer, Fannin, and Union, to the most available point on the boundary line between the states of Georgia and Tennessee or North Carolina, in the direction of the town of Murphy, in the State of North Carolina, crossing the East Tennessee, Virginia & Georgia Railroad and the Western & Atlantic Railroad at or near the city of Dalton, in Whitfield county; with power also to the said company to survey, lay out, contract, equip, maintain, and operate one or more branches from any convenient point or points along the line of said railroad to any towns, mines, factories, etc., within the counties named in this charter. . . . (Acts Ga., 1888, p. 173; approved December 26, 1888.)

There were no conditions specified in the above act as to terms of crossing.

## **9. Lessees of Western & Atlantic Railroad authorized to construct side tracks across certain roads, when and how.**

The General Assembly of Georgia do enact as follows:

SECTION 1. *Be it enacted, That whenever the lessees of the Western & Atlantic Railroad shall desire, or whenever it is necessary to reach the patrons of said road, said lessees be, and*



they are hereby, authorized, at their own expense, to build and construct side tracks across the lines of other roads, whenever such other roads occupy a part of such right of way of the Western & Atlantic Railroad.

SEC. 2. *Be it further enacted*, That all laws and parts of laws in conflict herewith be, and the same are hereby, repealed. (Acts Ga., 1889, p. 351; approved November 11, 1889.)

**10. Catoosa Springs Company's railroad authorized to be built on right of way of Western & Atlantic Railroad from Ringgold to bridge across Chickamauga creek, how.**

SECTION 1. *Be it enacted by the General Assembly of the State of Georgia*, That the act incorporating the Catoosa Springs Company, with power to construct a railroad, approved the twenty-fourth day of October, 1887, be, and the same is hereby, amended so as to authorize said company to use a part of the right of way of the Western & Atlantic Railroad, between some point at or near the depot of the Western & Atlantic Railroad at Ringgold, Catoosa county, and a point at or near the first railroad bridge across Chickamauga creek, on said railroad, south of Ringgold, for the purpose of constructing and laying the track of the railroad authorized to be constructed and built by the Catoosa Springs Company, as pro-

**Proviso as to track of W. & A. R. R.** *provided* in the original act incorporating such company; *Provided*, Nothing in this act contained shall be so construed as to give said company the right to so construct and lay the track of said railroad as will in any manner obstruct or interfere with the track of the Western & Atlantic Railroad, or with any repairs that may be required to be made thereon at any time hereafter; *And provided further*, The right to use a part of the right of way of the Western & Atlantic Railroad, between the depot at Ringgold and the first railroad bridge across Chickamauga creek, shall be limited to the use of not more than one-half mile of said right of way in a continuous line; *Provided further*, That, before the said company shall have the authority to use any part of the right of way or property of the Western & Atlantic Railroad, just and adequate compensation shall be first paid to the state.

SEC. 2. *Be it further enacted*, That in order to determine the question of what is just and adequate compensation to be paid to the state, the provisos of the act incorporating the said company as to condemnation shall apply, the gov- Governor to represent state. ernor to represent the state in the selection of assessors; and the right of appeal from the award of the assessors shall also be as is provided in said act, the governor to represent the state for that purpose also; *Provided*, That in no event shall any part of the right of way of the Western & Atlantic Railroad be condemned where it will in any way interfere with the perfect operation of said Western & Atlantic Railroad; *Provided*, That this company shall pay to the legal authorities in control of the Western & Atlantic Railroad, or the State of Georgia, a just and reasonable compensation annually so long as they may use said right of way; *Provided further*, That the Catoosa Springs Railroad Company shall not occupy the right of way so as to prevent the laying of a double track between Catoosa station and the town of Ringgold, the compensation for the use of right of way to be determined by arbitration.

SEC. 3. *Be it further enacted*, That all laws and parts of laws in conflict with this act be, and the same are hereby, repealed. (Acts Ga., 1889, p. 442; approved November 13, 1889.)

The Catoosa Springs Company was incorporated October 24, 1887, by act of legislature, which granted them the power to construct a railroad on the plan of a street or tram railway, from the right of way of the Western & Atlantic Railroad, in Catoosa county, to Catoosa Springs, in the same county.

# **11. Georgia, Alabama & Carolina Railroad Company authorized to cross Western & Atlantic Railroad.**

SEC. 2. *Be it further enacted*, That said corporation shall have power and authority to survey, lay out, construct, and equip, and to own, operate, and maintain, a railroad from some point on the dividing line between the States of Alabama and Georgia north of the Coosa river, or between the city of Gadsden and the Tennessee State line, thence through the State of Georgia, crossing the Western & Atlantic Railroad at some

point between the towns of Dalton and Cartersville, with the right to pass through and enter any of the counties, towns, and cities, etc. . . . (Acts Ga., 1889, p. 409; approved November 13, 1889.)

There were no conditions specified as to crossing in the above act.

## **12. Fairmount Valley Railroad not to run nearer than ten miles of Western & Atlantic Railroad, when.**

SEC. 2. *Be it further enacted*, That said company is hereby authorized and empowered to survey, lay out, construct, and build a railroad from the city of Cartersville (or such other point as they may select on the Western & Atlantic Railroad), in the county of Bartow, through the counties of Bartow, Gordon, Murray, and Fannin, to the state line between Georgia and Tennessee; *Provided*, That after the first ten miles said road shall not run nearer than ten miles to the Western & Atlantic Railroad. . . . (Acts Georgia 1889, p. 384; approved November 4, 1889.)

## **RESOLUTIONS OF GEORGIA RELATING TO WESTERN & ATLANTIC RAILROAD.**

1. Resolution directing governor to ascertain on what terms the road can be extended to the Tennessee river in the state of Tennessee. (Acts Georgia, 1836, Pam. 3.)

2. Requesting the governor to dispatch a special agent to Tennessee to negotiate in behalf of the state, for the purpose of authorizing the extension of the road to Tennessee river. (Acts Georgia, 1837, Pam. 270.)

3. Offering to secure similar privileges to any road in Tennessee seeking to connect with Western & Atlantic Railroad in Georgia: *Provided*, The State of Tennessee grants the privilege of extending that road to Tennessee river. (Acts Georgia, 1837, Pam. 271.)

4. Approving the Hiwassee Railroad Company's connection with the state road, and directing an experimental survey by Red Clay to the Tennessee river. (Acts Georgia, 1838, Pam. 281, 282, 283, 284.)

The name of the Hiwassee Railroad Company was changed by Acts Tennessee, 1847-48, ch. 169, p. 272, sec. 3. to the East Tennessee & Georgia Railroad Company.



## ACTS OF TENNESSEE IN RELATION TO WESTERN & ATLANTIC RAILROAD.

### 1. Georgia granted rights of Nashville & Chattanooga Railroad Company in Tennessee in building Western & Atlantic Railroad.

*Be it enacted by the General Assembly of the State of Tennessee,* That all the rights, privileges, and immunities, with the same restrictions which are given and granted to the Nashville & Chattanooga Railroad Company by the act of the general assembly of this state incorporating said company, passed December 11, 1845, are, so far as they are applicable, hereby given to and conferred upon the State of Georgia, to be enjoyed and exercised by that state in the construction of that part of the Western & Atlantic Railroad lying in Hamilton county, Tennessee, and in the management of its business. (Acts Tenn., 1847-8, ch. 195, p. 330; passed February 3, 1848.)

### 2. Georgia granted rights of Hiwassee Railroad Company in Tennessee in building Western & Atlantic Railroad.

SECTION 1. *Be it enacted by the General Assembly of the State of Tennessee,* That the State of Georgia shall be allowed the privilege of making every necessary recognizance and survey for the purpose of ascertaining the most eligible route for the extension of her Western & Atlantic Railroad from the Georgia line to some point on the eastern margin of the Tennessee river.

SEC. 2. *Be it further enacted,* That as soon as said route and point shall be ascertained, the State of Georgia shall be allowed the right of way for the extension and construction of her said railroad, from the Georgia line to the Tennessee river, and that she shall be entitled to all privileges, rights, and immunities (except the subscription on the part of Tennessee), and be subject to the same restrictions, as far as they are applicable, as are granted, made, and prescribed for the benefit, government, and direction of the Hiwassee Railroad Company.

SEC. 3. *And be it further enacted,* That the foregoing rights and privileges are conferred upon the State of Georgia on con-

dition that, whenever application is made, she will grant and concede similar ones, and to as great an extent, to the State of Tennessee or her incorporated companies. (Passed January 24, 1838.)

For rights, privileges, and immunities of the Hiwassee Railroad, see charter of that company on p. 63 herein.

### **3. Further time given to complete Western & Atlantic Railroad.**

*Be it enacted by the General Assembly of the State of Tennessee,* That the further time of two years, from the first day of January next, be given to the State of Georgia to complete the Western & Atlantic Railroad of that state to Chattanooga, on the Tennessee river. (Acts Tenn., 1847-48, ch. 14, p. 43; passed October 18, 1847.)

### **3. Memorial of Tennessee legislature to Georgia legislature in regard to Western & Atlantic Railroad and comity between states.**

The preservation of the union of these states is an object of the highest importance, and demands the most profound consideration of every patriot and statesman. So far as any foreign or extraneous influences, calculated or intended to affect its permanence or impair its integrity, are concerned, we have nothing to fear; so long as a unity of sentiment on the subject of our national honor and national rights is cherished, and harmony of feeling is maintained at home, we have nothing to fear from the enemies of our institutions, though they come in the imposing form of the combined powers of earth.

Harmony among the states composing this great confederacy is not only essential to the advancement of all the great interests of the country, but is of indispensable importance to the very existence of the union. It is therefore meet and proper that each of the states composing this great sisterhood should labor, as far as may be in their power, to avoid all just ground of complaint, and, by all honorable means, endeavor to shun everything that is calculated to produce an alienation of feeling or in any way disturb the kind and friendly relations that should exist between members of the same great family. Cherishing

sentiments of this character, whenever grievances are believed to exist it is the manifest duty of the party aggrieved, in a spirit of kindness, confidence, and frankness, to state the cause of complaint. And it is equally due to the party aggrieved that the complaint should be received in the same spirit of kindness, and if, after impartial investigation, they should be found to exist, every consideration of justice, magnanimity, and patriotism demand their redress.

Profoundly anxious to maintain the kindest and most amicable relations with our sister state of Georgia, and feeling that those kindly relations would be best promoted by a frank presentation of the evils under which we labor, the general assembly of the State of Tennessee would respectfully suggest to the legislature of the State of Georgia the following considerations:

It will be remembered by your honorable body that an application was made by the general assembly of your state to the legislature of this state, during the winter of 1837-8, for the privilege of extending her Western & Atlantic Railroad from the Georgia line to the margin of the Tennessee river, within the limits of Tennessee, and that certain rights, powers, privileges, and immunities were granted to the said Western & Atlantic Railroad, on the express condition that similar powers, rights, privileges, and immunities should, on application, be conceded to the State of Tennessee, or her incorporated companies. In accordance with this agreement, during the winter of 1847, an application was made to the legislature of Georgia for a grant of the rights and privileges as stipulated in the compact, to the Hiwassee (now the East Tennessee & Georgia) Railroad Company. This application was promptly met and the pledges faithfully redeemed.

The East Tennessee & Georgia Railroad Company, relying with implicit confidence on the good faith of the compact, have proceeded to construct their road through the territory of Georgia to the town of Dalton. In executing the powers thus granted to them, the East Tennessee & Georgia Railroad Company have met with many difficulties, and been subjected to



many annoyances and inconveniences, resulting in serious damages to the company, all of which they think are in contravention of the clearly expressed stipulations of the compact, and in violation of its spirit and intention. These annoyances have been many and various, resulting in delays and damages, by the institution of lawsuits, greatly to the detriment of the company, in violation of the claims of justice, and in derogation of that spirit of concord, harmony, and affection that should exist, not only between the states or sovereigns in equality, but between the citizens of these sovereignties.

We would, therefore, respectfully suggest to your honorable body that you cause such inquiry to be made into those alleged wrongs as justice, and a determination to maintain inviolate the plighted faith of the state, may demand. And should they be found to exist, we doubt not your readiness to apply the corrective, and make all proper amends.

Having disposed of this question, you will pardon us for diverting to some other subjects of mutual interest, and which seem to demand our consideration. Following the noble example which you have set us and your sister states of the south, in the adoption of an enlarged and liberal system of internal improvements, by which you have erected a monument for yourselves as enduring as time, we have partaken of the same spirit and entered the field in the same race, and seek now, in the infancy of our undertakings, to establish such relations as may conduce to our common interests, and in the end redound to the honor, peace, and prosperity of all. You are doubtless aware that the citizens of this state, with such aid as the state has given them, have embarked in a system of internal improvements of no small proportions. You are aware that several hundred miles of road are now being constructed in Tennessee amounting, when completed, to not less than seven hundred, costing many millions of dollars, and all directed to your state road, and every mile of which must be tributary to your great lines of improvements, pouring their rich treasures into your lap, not only by largely increasing the dividends on your works, but by enlarging and multiplying your commerce to an

extent as yet undefined, and which the imagination is scarcely bold enough to conjecture.

Seeing the vast community of interest springing up between us, and which, if cherished and protected, must go on multiplying and expanding to an almost unlimited extent, is it not most proper and important that we should now, in the incipency of things, when but few causes of complaint exist, when no feelings of distrust have been engendered, to establish such an understanding and enter into such a comity as will forever save us from discord, and establish such ties of friendship and relationship, of social and commercial identity, as shall secure the harmony and interest of all, and establish the great principle of a reciprocity of kind feelings, good offices, and mutual dependence, on a basis as firm and immutable as time itself.

All the various roads now being constructed in this state, and in which you have a large interest, are the property of incorporated companies, the stock owned chiefly by individual stockholders, and consequently liable to all the restrictions imposed by their several acts of incorporation, and amenable to all responsibilities and liabilities of common carriers. These restrictions and liabilities are conceded to be essential to a just and reasonable protection of the rights of persons and property. If, by negligence, inattention, incompetency of officers or agents, or negligence of any kind, the rights or interests of any of your citizens are compromised or sacrificed, the remedy is plain, and the redress easy and certain. Not so in the case of the Western & Atlantic Railroad. This is exclusively the property of your state. Its property and rights are vested in a sovereignty, and consequently exempt from the liabilities that attach to individuals or companies of incorporation. Should damages result to citizens of your state or ours, or any of our sister states, what remedy, what redress have we or they now but such as a sense of justice of the legislature may accord them, and which, if obtained, must be done with much delay and great expense? Difficulties enough in many instances to amount to a denial of justice, in consequence of the inconvenience of making the application to the only source of redress, the legislative power of your state.

May we not, therefore, ask that you will take such action as your sense of justice and fairness may suggest—such as will place all the interests involved on a footing of equality—such as will secure a faithful administration of your road, quiet all apprehensions, and give confidence and efficiency to our great enterprises?

There is but one other point to which we would call your attention and claim your earnest consideration. And that is the obstruction that exists at the Savannah river. However much may be said by the advocates of free trade between the nations of the earth, on one side, or the opponents of that system on the other; however plausible their theories may be on the one side or the other, they have nothing to do with the question under consideration. So far as a full, free, and unrestrained interchange of commodities between these states is concerned, there is no difference of opinion. In this all concur. Statesmen of all parties agree that useless, unnecessary, and voidable restrictions to the full, free, and liberal intercourse, social and commercial, between all the states of the union, is at war with the spirit of our institutions, and dangerous to its harmony and stability, and in its tendencies subversive of the great charter of our rights, and of that spirit of kindness and friendship without which the union is a mere mockery, and cannot survive the conflicts of party and the storms of passion and prejudice. Whenever obstructions necessary and unavoidable are to be met, all will bow submissively to the burdens they impose. But when there is no such necessity, every sense of justice and equality demands their abatement. Devotion to the union, equality of rights, the peace and happiness of society, the enlarged and liberal spirit of the age, the age of progression and improvement, all demand their abatement. Is not this obstruction of this character, and does it not demand your favorable consideration? Is there any necessity for the continuance of this obstruction? Does the interest of your state require it, and is it in accordance with the great principles we profess? If one state may erect a barrier to the free intercourse between the states, then may another and another



do the same thing, and when this spirit is turned loose on the country, none can doubt the result—anarchy, discord, and ruin must rule supreme.

The burthens imposed by this obstruction on the productions of the West and the transportation of persons, are most oppressive, amounting, for the short distance of less than one mile, to a cost equal to about sixty or seventy miles of railroad transportation. We will not trespass on your patience in this communication by enumerating the various items of cost thus imposed, but refer you to the schedule of freights and charges thus exacted. All political economists in our country agree that a tariff of charges on a transfer of property between the states is not to be tolerated.

We are unable to see the difference between your laying a direct tax of twenty-five cents per bale on our cotton and fifty cents per capita on each individual who enters your state and proposes to pass out of it, and the no less certain but more indirect process of compelling the same amounts to be paid in shape of drayage and tolls. The result is the same, the injustice the same. It may be said that an act of incorporation has been granted to the owners of this property, and that it would be an act of bad faith to trespass upon the rights thus vested. We do not ask or desire that the rights of states, corporations, or individuals shall, in the slightest degree, be violated or disregarded. None would go further than we in maintaining them. We do not ask that the rights of any shall be assailed; we only ask that ours may be protected. If the legislature of your state has parted with her sovereignty and control over this subject, we do not invite her to an act of bad faith. But has she done this? We understand not. Suppose, however, that the power to control bridges over the Savannah river for three or four miles up and down be granted to the corporation of Augusta, we would not have it violated, except by consent or payment of an equivalent; and we cannot doubt that considerations connected with the interest of citizens of Georgia, as well as those of Tennessee and Kentucky, and, in fact, the great West, most likely soon to be placed in connection by rail-

way improvements, will powerfully induce your honorable body to pecuniary appropriations, or some other legitimate means which may effect the desired object. Granting this right, which is alleged not to exist, none will doubt the power of your honorable body to grant the Georgia Railroad Company, or any other company you may choose to incorporate, the power to construct a road and build a bridge above or below the territory thus assumed to have been consecrated to the special use and benefit of the corporation of Augusta.

Candor and friendship require that we should say that this question is one of great importance to the interest of our citizens, and that it is a cause of much and growing complaint, boding no good to the commercial intercourse which we hope to see established between two states so intimately connected in everything that is calculated to advance our interest, honor, and prosperity. Having presented these subjects to your consideration, we cannot doubt that their importance will at once be obvious to you. Nor do we permit ourselves to doubt but that you will receive this communication in the same spirit of candor, frankness, and friendship in which it is dictated, and that your wisdom will suggest such remedies as justice may demand and the great interests involved.

*Resolved*, That this communication be, and the same is hereby, adopted by the General Assembly of the State of Tennessee, and that James A. Whitesides be, and he is hereby, appointed a commissioner on the part of this state to communicate the same to the General Assembly of the State of Georgia, and use such efforts to secure the accomplishment of the objects contemplated as may be in his power.

*Resolved*, That his excellency, the governor of Tennessee, be authorized to transmit to the commissioner, Mr. James A. Whitesides, the memorial and resolution of this legislature to the legislature of Georgia, setting forth the grievances of which the people of Tennessee complain, and request his prompt attention to the same. (Acts Tenn., 1851-2, p. 706, No. 6; adopted November 10, 1851.)

## CHAPTER XXXII.

*THE ROME RAILROAD COMPANY.*

(ROME BRANCH.)

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—On December 31, 1896, the Rome Railroad Company, in pursuance of a resolution of its directors and stockholders, held at its principal office in Rome, Georgia, prior to the date above mentioned, sold its road, properties, rights, and franchises to the Nashville, Chattanooga & St. Louis Railway. The consideration paid was the sum of two hundred thousand dollars. A deed to the same was properly acknowledged and registered in the superior court of Floyd county, Georgia, in book CCC of deeds, page 96, No. 60, and in Bartow county, in book GG, pages 409–414. The deed is also set out herein in next chapter.

1. **Legality of the purchase of the road.**—The purchase of this railroad by the Nashville, Chattanooga & St. Louis Railway was legal under the Acts of Tennessee, 1871, ch. 69, which superseded the Acts of 1871, ch. 22. The Rome Railroad Company had no power, under its charter, to sell its road, franchises, etc., but, on December 30, 1896, it filed with the secretary of State of Georgia a petition, under the Acts of Georgia, 1893, page 89, approved December 20, 1893, for an amendment to its charter, so as to enable it to do so. On the same day the petition was granted, and all the powers and privileges of sections 13 and 18 of an Act of Georgia, 1892, page 37, approved December 17, 1892, entitled, "An Act to carry into effect article 3, section 7, paragraph 18, of the constitution of this state," etc., was conferred upon it, in addition to the power to sell and convey its railroad and all its property and franchises to any railroad company. The petition and amendment is set out herein in the next chapter, and is duly registered in the secretary of state's office at Atlanta, Ga.

2. **Effect of purchase in rendering the Nashville, Chattanooga & St. Louis Railway a domestic corporation of Georgia.**—The purchase of this road, franchises, etc., by the Nashville, Chattanooga & St. Louis Railway did not operate to incorporate the latter company in the State of Georgia. Elliott on Railroads, sec. 26; 1 Hilton (N. Y.), 62; 30 N. J. L., 473; 31 N. J. L., 531; 32 Ohio St., 468; 58 Pa. St., 26. See, however, 85 Tenn., 189. It doubtless operates to domesticate the Nashville, Chattanooga & St. Louis Railway, however, as to the line of the Rome Railroad, and hence no suits brought against the Nashville, Chattanooga & St. Louis Railway, growing out of the operation of this line of road, can be



removed to the federal court upon the ground of "nonresidence." 74 Ga., 634, citing 60 Ga., 274; 108 U. S. R., 436; 14 Minn., 303; 43 Mich., 354; 1 Wall., 40; 12 Wall., 65, 82. See, also, 59 Ga., 263; 3 Tenn. Chy., 602; 21 Law Rep., 138; 53 Ala., 237; 9 Am. & Eng. R. R. C., 201; 76 Ga., 99; 90 Ga., 523.

**What franchises, etc., passed under this sale.**—In addition to the road and other property conveyed, the deed specifically transferred all the rights, privileges, and franchises of the Rome Railroad Company. These rights and privileges are fully set out in the charter and amendments thereto, and may be found further on in this chapter.

**Width of right of way.**—The width of the right of way of this branch, as appears from the deed to the same, is nowhere less than fifty feet in width, though at many places it is much broader, as will fully appear in the deed to the same, which is set out herein in the next chapter.

The charter of the Rome Railroad Company, which was formerly incorporated as the Memphis Branch Railroad & Steamboat Company of Georgia, as will be hereafter fully explained, contains no clause providing for a specified width of right of way in the absence of any contract with the original landowner or in the absence of any condemnation proceedings, but section 6 thereof simply provided that "the board of directors shall have power to select and take or receive as donation such strip or strips of land between the points selected for said road, and of such width as they may deem necessary for the construction of said road, and, in all cases in which disagreement may arise between individuals and corporations and the directors of the said company as to the right of way or damages to property on said strip or strips of land, it may and shall be lawful for the company to appoint a competent and disinterested freeholder, and the owner or owners of such land shall also appoint one competent and disinterested freeholder, both of whom shall be sworn by some judicial officer to do equal justice between the parties, and they shall then proceed upon the premises as a committee of arbitration and appraisement," etc. This being so, only the number of feet actually taken or donated at each particular point can now constitute

the right of way, and to determine which the records of each county through which the road runs must be examined. The deed insures at least fifty feet throughout its entire line, however.

1. **Successive appropriation.**—For a discussion of the right and method of taking more than fifty feet for the right of way when necessary for railroad purposes, see *Eminent Domain, Right of way*, herein. Refer to index.

2. The right to condemn land for right of way, once exercised, is exhausted and not afterwards enlarged. 71 Ga., 591.

3. Railways, under the general law, however, may take lands outside of right of way for obtaining sand, etc. 97 Ga., 107.

4. For right of this company to enjoin building on right of way, see 27 Ga., 477. See, also, *Right of Way*, herein. Refer to index.

**Distance built when purchased by Nashville, Chattanooga & St. Louis Railway.**—The road from Rome to its intersection with the Western & Atlantic Railroad, at Kingston, had been constructed when the purchase was made.

## ORIGINAL CHARTER OF THE ROME RAILROAD COMPANY.

[Acts Georgia, 1839, p. 105.]

**Preamble.**—WHEREAS, It would be desirable that the first practicable railroad should be constructed from the southeastern seaboard of the Atlantic due west; and,

WHEREAS, The State of Georgia has opened a railway across the most formidable obstacles to this enterprise within her territory, and to a point distant some thirty miles from the boundary of Alabama; and,

WHEREAS, The Coosa river may, while the railroad construction is pending and after, afford a fair steamboat navigation.

**SEC. 1. Incorporation, name.**—*Be it enacted by the Senate and House of Representatives of the State of Georgia, in general assembly met, and it is hereby enacted by the authority of the same,* That, for the purpose of completing the thirty miles of railroad still within the limits of Georgia themselves, and of encouraging others to join in the continuation of the same, in its onward course west, and for the purpose of trading by steamboats on the Coosa river, James Liddle, Andrew Miller,

Joseph Waters, John Smith, Daniel Irwin, Robert Ware, William Hardin, Philip Hemphill, James Hemphill, Robert Mitchell, John H. Lumpkin, Daniel R. Mitchell, James Ware, Edward Ware, James H. Rogers, and John Dawson, with all such others as may hereafter become stockholders in said company, be, and they are hereby, incorporated and made a body corporate and politic, by the name and style of the Memphis Branch Railroad & Steamboat Company of Georgia, subject to the conditions, restrictions and limitations hereinafter specified.

1. **Name changed.**—By Acts Ga., 1849–50, p. 243, the name of this company was changed to the *Rome Railroad Company*. See act itself in next chapter.

2. **Charter a public law.**—An act incorporating a railroad company is a public law, and need not possibly be given in evidence. 74 Ga., 509; 55 Ala., 413; 4 Pickle (Tenn.), 140; 11 Hum. (Tenn.). 219; 3 Sneed (Tenn.), 87.

3. **Charter a contract.**—The charter of a railroad company is an inviolable contract between the state and incorporators. 62 Ga., 473, 485. See, also, notes to sec. 34 of charter of Nashville, Chattanooga & St. Louis Railway, ch. 1. herein. This contractual relation, however, has since been impaired, if not destroyed, by the acceptance of the amendment under the Acts of Ga., 1893, p. 89, authorizing the company, among other things, to sell its road. The acceptance of the amendment doubtless brought the company within the provisions of the constitution of Georgia of 1877, which enables the state to amend the charters of all companies at pleasure.

**SEC. 2. General powers; by-laws, rules, etc.**—*Be it further enacted by the authority aforesaid,* That the Memphis Branch Railroad & Steamboat Company of Georgia shall have perpetual succession of members, shall be capable in law to purchase, accept, hold, sell, and convey real and personal estate; that they may have a common seal, may sue and be sued, plead and be impleaded in any court of law or equity, and may, at meetings of stockholders, or by a board of directors, make all such rules and regulations or by-laws as are necessary and proper for the good of the corporation and of effecting the objects for which it is created: *Provided,* Such by-laws, rules and regulations be not repugnant to the constitution of this state and of the United States.

1. **Power granted to consolidate with Memphis Branch Railroad Company, how.**—By Acts Ga., 1870, p. 360, this company was granted the power to consolidate its stock and franchises with the Memphis Branch Railroad Company. For terms and conditions, see act itself in



next chapter. The Memphis Branch Railroad Company was chartered by Act Ga., 1868, p. 111, approved October 10, 1868, to build a railroad from Rome, in Floyd county, to the Alabama line, on the north side of the Coosa river, in the direction of Gadsden, Ala.

**2. May contract with certain railroad companies as to joint use of right of way.**—By Acts Ga., 1872, p. 365, this company was granted power to contract with the Selma, Rome & Dalton Railroad Company, the Memphis Branch Railroad Company, the North & South Railroad Company, Lookout Mountain Railroad Company, and any other railroad connecting or to be connected at Rome, for a common use of railroad yards, right of way, etc. See act itself in next chapter.

**3. General powers (enlarged); may sell road, franchises, etc.**—On December 30, 1896, the Rome Railroad Company filed a petition with the secretary of state of Georgia, under the Acts of Ga., 1893, p. 89, authorizing it to be done, asking for an amendment to its charter as therein provided, and, on the same day, the petition was granted, and all the powers and privileges of sections 13 and 18 of an act of Ga., 1892, p. 37, approved December 17, 1892, was conferred upon it. The powers contained in section 13 were as follows:

"**SEC. 13.** *Be it further enacted,* That said railroad company shall have the power, and authority is hereby granted, to make and enter into contracts with any railroad company which has constructed, or shall hereafter construct, any railroad within this state, or any other state, as will enable said company to run their said roads in connection with each other and merge their stocks, or to consolidate with any such company, within or without this state, or to lease or purchase the stock and property of any other such company, and hold, use, and occupy the same in such manner as they may deem most beneficial to their interest; *Provided,* That no railroad shall purchase a competing line of railroad, or enter into any contract with a competing line of railroad, calculated to defeat or lessen competition in this state, and any violation of this section shall subject the corporation to all the penalties incident to such violation of the law. It shall be lawful for such companies to build, construct, and run, as part of their corporate property, such number of steamboats or vessels as they shall deem necessary to facilitate the business operations of such company or companies. That the secretary, or other officer or agent of said company, who, by this act or by-laws of said company, is made the custodian of the books, records, papers, or other property of said company, shall keep the same in his possession at all times during business hours, have the same ready to be exhibited to any officer, director, or committee of stockholders of said company, and furnish them, or either of them, with transcripts from the records of proceedings of the board of directors of said company, under his official hand and seal, on the payment to him of the same fee as that provided by law for the clerk of the court for transcripts from the records of his office; and the said secretary shall, on resigning his office, or otherwise vacating the same, make over all such books, records, papers, and all other property of the corporation which are in his possession, to his successor in office, or when no successor has been appointed or elected, to the board of directors, if any, or to the person or persons appointed by the stockholders of such company."

The powers, as contained in section 18, were as follows: "**SEC. 18.** *Be it further enacted,* That any railroad company incorporated under the provisions of this act shall have full power and authority to sell, lease, assign, or transfer its stock, property, and franchises to, or to consolidate the same with, those of any other railroad company incorporated under the laws of this or any other state or of the United States whose railroad, within or without this state, shall connect with or form a continuous line with the railroad of the company incorporated under this

law upon such terms as may be agreed upon; and, conversely, any such corporation organized under the provisions of this act may purchase, lease, consolidate with, absorb and merge into itself the stock, property, and franchises of any other railroad company incorporated under the laws of this or any other state or the United States whose railroad, within or without this state, shall connect with or form a continuous line or system with the railroad of such company incorporated under this law upon such terms as may be agreed upon. And it shall be lawful for any railroad company or corporation now or hereafter formed by the consolidation of one or more railroad companies or corporations organized under the laws of this state, or under the laws of this state and any other states, with one or more companies or corporations organized under the laws of any other state or under the laws of this and other states, to issue its bonds and stock as provided for in this act, in such amounts as they may deem necessary for the purpose of paying or exchanging the same for or retiring any bonds or stocks theretofore issued by either of the said companies or corporations so merged, purchased, or consolidated, or for any other purpose, and to the amount authorized by the laws of the state under which either of said companies or corporations so consolidated was organized, and to secure the same, in case of bonds, by mortgages or trust deeds upon its real or personal property, franchises, rights and privileges, whether within or without this state: *Provided*, That no railroad company shall make any contract under the provisions of this section with any other railroad company which is a competing line that is calculated to defeat or lessen competition in this state or to encourage monopoly."

**SEC. 3. Capital stock, route, books opened.**—*Be it further enacted by the authority aforesaid*, That it shall and may be lawful for the said company to create a stock of \$500,000, or such less sum as the company may deem necessary, to be increased, if proper, one-third, for the purpose of carrying out all the objects hereinafter described, to wit: A railroad from such point of the Atlantic & Western Railroad as may be nearest the town of Rome, situated at the head of the Coosa river, to the Alabama line, passing along the valley of the Coosa river; to locate and construct and to put into operation said road, and to prepare the Coosa river by canals, dams, locks, jetts, and all other works that may be required for steam navigation, and to furnish the same with a supply of boats; and they are authorized and empowered to cause books of subscription to be opened in such places and in such manner as they may deem most conducive to effect the obtainment of the stock required for the purposes aforesaid.

1. **Route.**—By Acts Ga., 1845, p. 145, the above section was amended so as to authorize the company to construct the road from such point on the Western & Atlantic Railroad to Rome, in Floyd county, and by such route as may be deemed most practicable and expedient; and further provided that the company might or might not carry said road beyond

Rome, as they might deem proper. The act further granted the company until 1850 to complete the road to Rome. See act itself in next chapter.

2. **Capital stock.**—By Acts Ga., 1847, p. 170, the capital stock of this company was authorized to be \$100,000, in shares of \$100 each, with power to increase, after completion and equipment of road, to an amount not exceeding the actual cost of road and outfit. See act itself in next chapter.

**SEC. 4. Number shares of stock, value, installments.**—*And be it further enacted by the authority aforesaid,* That the capital stock of said company shall consist of ten thousand shares of \$50 each, but the number of shares may be increased one-third; and upon the subscription for shares in said stock, the subscribers shall pay the sum of \$5 dollars upon each share subscribed for by such subscriber; *Provided,* That said company may commence the construction of their railroad and boating so soon as three thousand shall be subscribed.

**Value of shares.**—By Acts Ga., 1847, p. 170, the value of the shares of stock was authorized to be \$100. See act itself in next chapter.

**SEC. 5. Road to be completed, when; freight and passenger charges.**—*Be it further enacted by the authority aforesaid,* That the said company shall be allowed the term of eight years, from the passage of this act, to complete said railroad to the navigable waters of the Coosa, with the improvements of that river for steam navigation, and an additional term of ——— years for the completion of the railroad to the Alabama line; and said company shall be entitled and authorized to demand and collect freights and tolls on all goods, wares, and merchandise or productions of the country transported over said road and upon the said river, and also for passengers on the same, as the board of directors of said company may find is necessary to adopt, from time to time, in their regulations of tolls; *Provided,* That during any twelve months together the net amount shall not exceed twenty per cent. per annum upon the amount of capital actually paid in, or the amount actually expended in making, constructing, and keeping in good repair said railroad and steamboat communication.

1. **Time to complete.**—By Acts Ga., 1845, p. 145, the company was granted until 1850 to complete the road to Rome. See act itself in next chapter.

2. **Freight charges.**—See 70 Ga., 694; 50 Ga., 304.



**SEC. 6. Land for right of way, how acquired; value, how assessed.**—*Be it further enacted by the authority aforesaid,* That the board of directors of the aforesaid company shall have power to select and take or receive, as donation, such strip or strips of land between the points selected for said road, and of such width as they may deem necessary for the construction of said road; and in all cases in which disagreement may arise between individuals or incorporations and the board of directors of the aforesaid company, as to the right of way or damages to property on such strip or strips of land, it may and shall be lawful for the company to appoint a competent and disinterested freeholder, and the owner or owners of such land shall also appoint one competent and disinterested freeholder, both of whom shall be sworn by some judicial officer to do equal justice between the parties, and they shall then proceed upon the premises as a committee of arbitration and appraisement, and they shall make, in writing, their award of valuation of damages, to be approved and signed by them, which amount the said company shall pay unto the owner or owners of such strip or strips of land, and the fee simple right thereof shall vest in the company forever; and the award shall be recorded in the office of the clerk of the supreme court in the county, in the same manner as deeds. In case the owner or owners of such strip or strips of land shall refuse on their part to appoint a referee, then, and in that event, the inferior court, or a majority of the court, of the county in which such strip or strips of land may lie, shall appoint a referee; and in case the committee aforesaid, in either way appointed, cannot agree upon the value of right of way and the amount of damages, they shall choose a third man, who shall be sworn as aforesaid, and be added to said committee; and in case either party be not satisfied with the decision of the arbitrators, they may appeal to a special jury in the county where the land may lie, which appeal shall be tried before the supreme court of the county at its first term after the appeal is made, and the decision of this special jury shall vest in the railroad company aforesaid the fee simple of the strip or strips of land in question,

and the other party a judgment for the value thereof thus ascertained and determined.

1. **Width of right of way.**—Under this section, only the number of feet actually taken or donated at each particular point can now constitute the width of right of way, and, to determine which, the records on file in each county through which the road runs must be examined. The deed to the road, however, which is set out in the next chapter, insures at least fifty feet throughout its entire line. See 27 Ga., 477, for right of company to enjoin building on right of way.

2. **Successive appropriations.**—For a discussion of the right to make successive appropriations, see *Eminent Domain, Right of Way*, herein. Refer to index.

3. The right to condemn land for right of way, once exercised, is exhausted, and not afterwards enlarged. 71 Ga., 591. Railways, under the general law, may take land outside of right of way for obtaining sand, etc. 97 Ga., 107.

**SEC. 7. Public roads not to be obstructed; other roads within twenty miles prohibited; capital stock exempt from tax.**—*Be it further enacted by the authority aforesaid*, That the said company shall not obstruct any public road which may be crossed by their road; that no other railroad shall be hereafter permitted to be constructed within twenty miles of the route the aforesaid company may select, and that its stock shall not be liable to any tax, duty, or imposition whatever, unless such, and no more, as is now in bank of this state.

1. **Other roads within twenty miles.**—The above clause prohibiting the building of other railways within twenty miles of this was valid. 96 Ga., 562. See, also, 70 Ga., 694; 86 Ga., 83; see, also, notes to sec. 13 of the charter of the Nashville, Chattanooga & St. Louis Railway, ch. 1, herein. It is probable, however, that this section is now impaired, if not invalidated, by the amendment granted by the secretary of state, under the Acts of Georgia, 1893, p. 89, approved December 20, 1893, authorizing the company, among other things, to sell its road, for, by accepting the provisions of the act, the company may have brought itself within the provisions of the constitution of Georgia of 1877, which enables the state to amend all charters at pleasure.

2. **Exemption from taxation.**—See 63 Ga., 473, for supreme court construction of this. This exemption, however, was also doubtless lost by applying for and obtaining the amendment from the secretary of state, as explained in the above note.

**SEC. 8. Directors, how chosen, qualification, voting, powers.**—*Be it further enacted by the authority aforesaid*, That the affairs of the company shall be under the management of a board of directors. This board shall be elected by the stockholders from their own body. No stockholder of the company shall be eligible as a director unless he holds fifty shares of the

stock, either in his own name or as administrator, executor, or guardian.\* In all elections the stockholders shall vote either in person or by proxy, duly authorized according to their shares, each stockholder being entitled to one vote for each share held by him. No share, however, shall entitle the holder to a vote unless the same has been transferred *bona fide* on the books of this company at least three months before the election. The directors shall elect a president from their own body, and the president and directors shall receive such compensation for their services as may be allowed by the owners and lawful representatives of a majority of shares of the capital stock of the institution, to be determined at the regular annual meeting of the stockholders and before the annual election of the directors. The board of directors shall be competent at all times to call an extra meeting of the stockholders, when by them deemed necessary, and shall have power to appoint and fix the salaries of their engineers, of a secretary and treasurer, and as many agents and clerks and laborers as they deem necessary and expedient for the business of said company.

1. **Qualification of directors.**—By Acts 1847, p. 170, sec. 2, this section was amended so that, "to qualify a stockholder for a director, he shall hold twenty shares of stock in said company instead of fifty." See act itself in next chapter.

2. \* By Acts Ga., 1866, p. 128, the above section was amended so as to read after the words "or as administrator, executor, or guardian," as follows: "Or as administrator, executor, guardian, or trustee."

**SEC. 9. Money deposited, installments.**—*And be it further enacted by the authority aforesaid,* That until a board of directors shall be organized, the amounts received on subscription for stock shall be deposited by the persons receiving such in the Western Bank of Georgia, at Rome. The board shall have power from time to time to call in such installments on the subscription as they may deem necessary for the progress and execution of the work, first giving to the stockholders, sixty days previous to the time of payment of such installment, notice in the *Georgia Pioneer*, published in Cassville, and in one of the public gazettes of Milledgeville; and in case any stockholder refuses to pay the installment required when thus demanded, the board shall have power to declare such shares of



stock forfeited to the use and benefit of the company. The party in default shall, however, have the right to appeal to the stockholders at their next regular meeting thereafter, and by consent of the owners and representatives of two-thirds of the capital stock of the institution, the previous installments which may have been paid upon the shares, offered by the board for re-subscription, as if the same had never been subscribed for.

**SEC. 10. Certificates of stock, annual elections, powers of directors.**—*And be it further enacted by the authority aforesaid,* That the persons authorized by this act to raise the capital stock of said company, or their authorized agents, shall issue certificates of stock to the subscribers at the time of subscribing, which may be exchanged for the certificates of the secretary and treasurer after the board of directors shall be organized, and authority given them for that purpose; and the evidences of debt of said company shall be binding only on the funds of said company when signed by the president and attested by the secretary and treasurer. The board of directors shall be elected annually and shall have power to fill vacancies in their own body; shall report annually on the state of the company and its affairs; but if the day of annual election should pass without any election of directors, the said corporation shall not thereby be dissolved, but it shall be lawful on another day to hold and make such election in such manner as shall be prescribed by the by-laws. A book of minutes of the proceedings of the stockholders and of the directors shall be kept by the secretary and treasurer, which, together with all of the books of the said company, shall be subject to the inspection of the stockholders at every meeting.

**SEC. 11. Company a common carrier; powers.**—*And be it further enacted by the authority aforesaid,* That the company aforesaid shall be deemed a common carrier as respects all goods, wares, merchandise, and produce intrusted to them for transportation, and shall have full power and authority to do and perform all and every corporate acts as are permitted or allowed to other companies incorporated for similar purposes. (Acts Ga., 1839, p. 105; assented to December 21, 1839.)

## CHAPTER XXXIII.

DEED TO AND ACTS OF GEORGIA RELATING TO ROME RAIL-  
ROAD AND AMENDMENTS TO CHARTER OF.

## DEED.

ROME RAILROAD COMPANY }  
    TO—*Deed.* } *State of Georgia, Floyd County.*  
N., C. & ST. L. RAILWAY. }

This indenture, made and entered into this, the thirty-first day of December, 1896, by and between the Rome Railroad Company, a corporation duly incorporated under the laws of the State of Georgia, party of the first part, and the Nashville, Chattanooga & St. Louis Railway, a corporation duly incorporated under the laws of the State of Tennessee, and with corporate rights in the State of Georgia and other states, party of the second part, witnesseth; that,

WHEREAS, The said party of the first part is desirous of selling its railroad and property and franchises of every kind, and said party of the second part is desirous of purchasing the same; and,

WHEREAS, The said parties hereto are duly authorized, under their respective charters and amendments thereto, the said party of the first part to sell, transfer, assign, and convey, and the said party of the second part to purchase, the said railroad and property and rights and franchises herein and hereby conveyed; and,

WHEREAS, The board of directors of each of the parties hereto have duly authorized and agreed for their respective companies, the party of the first part to sell, transfer, assign, and convey, and the party of the second part to purchase, the said railroad and property, rights and franchises, hereinafter set forth, in accordance with the terms and upon the consideration

of this instrument, and the same has also been duly agreed to and sanctioned by the vote of all the stockholders of the party of the first part, at a stockholders' meeting held at the principal office of the party of the first part, at Rome, Ga., at which meeting each and every share of the capital stock of the said party of the first part was present, and duly represented and voted—

NOW, THEREFORE, for and in consideration of the premises, and of the sum of two hundred thousand (\$200,000) dollars, in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the said party of the first part, hath granted, bargained, sold, conveyed, released, assigned, set over, transferred, and confirmed, and doth by these presents grant, bargain, sell, convey, release, assign, set over, transfer, and confirm unto the Nashville, Chattanooga & St. Louis Railway, the party of the second part, its successors and assigns, all and singular the line of railroad of the party of the first part, being about nineteen miles in length, and extending from the city of Rome in the county of Floyd, in the State of Georgia, through the counties of Floyd and Bartow, in Georgia, to the town of Kingston, in said county of Bartow, in the State of Georgia. And all side tracks, spur tracks, switching tracks, and tracks of every kind pertaining thereto, together with all the rights of way, depot grounds, yards, terminal properties, and rights and privileges of every kind, its entire roadbed, and superstructures; all depots, station houses, section houses, engine houses, shops, and all other buildings, and all lands and easements of every kind; also, all locomotives, tenders, cars, engines, tools, machinery, rails, spikes, joint fastenings, timbers, ties, and material of every kind, now held, owned, and possessed by the party of the first part. Also all the rights, powers, privileges, and franchises of or belonging to the party of the first part, and all other property and rights of property of every kind and nature, now held and owned by the said party of the first part.

Consideration.

Franchises  
pass.

The roadbed and right of way of the main line of railroad



above mentioned and herein conveyed extends from the western line of Broad street, in the city of Rome, at a point between the Hamilton storehouse and the Etowah river, to the point of junction with the Western & Atlantic Railroad, beyond the depot building in Kingston, Georgia. Said roadbed and main line right of way being nowhere less than fifty feet in width, measuring from the middle of the main line track, a distance of twenty-five feet on each side thereof. And the said roadbed and right of way being at many places along the line very much wider than fifty feet.

Also the following real estate, to wit : All that tract of land, situated, lying, and being in the lower portion of the city of Rome, in Floyd county, Georgia, and on the Etowah river, between the following points on said river, to wit : between the public county iron bridge, which crosses the said river at the foot of Broad street, and the wooden freight bridge of the East Tennessee, Virginia & Georgia Railway Company (now the Southern Railway Company), which bridge crosses said Etowah river above the mouth of Silver creek, and next above the iron bridge of the Chattanooga, Rome & Columbus Railroad Company, said tract of land being bounded on one side by said Etowah river, as above mentioned, and at low water mark along said river between the two points or bridges above named, and bounded on the northwesterly side by Broad street bridge and the apron and approach to said bridge and by Broad street ; and bounded on the northerly side by First avenue (formerly South street), as far along said street as to the property of the East Tennessee, Virginia & Georgia Railway Company (now the Southern Railway Company), which is a narrow strip of land adjacent to the property known as the Rome Compress property, and bounded on the easterly side by the above named narrow strip of land, owned by said Southern Railway Company (formerly the East Tennessee, Virginia & Georgia Railroad Company), said strip of land running from First avenue along around the Rome Compress property, and across the foot of East Second street (formerly Franklin street), and along by the freight depot of the Southern Railway Company

(formerly freight depot of East Tennessee, Virginia & Georgia Railroad Company), and across the foot of East Third street (formerly Alpine street), and then beyond said East Third street (formerly Alpine street) along a line twenty-five feet from the center of the main line track of the Rome Railroad Company to a railroad track of the Southern Railway Company (formerly East Tennessee, Virginia & Georgia Railroad Company), which track crosses the main line of the Rome Railroad Company, beyond the turntable of the Rome Railroad Company, and between said turntable and the Rome Oil Mills, then along the said track of the Southern Railway Company to the wooden freight bridge of the Southern Railway (formerly East Tennessee, Virginia & Georgia Railway), where said bridge crosses the Etowah river, said tract of land comprising and including the properties known as the Rome Railroad depots and platforms, and grounds, dray yards and switching yards; also the lands known as the Noble and Patton properties, and other lands of the Rome Railroad Company, adjacent and containing about eleven (11) acres, more or less, and various parcels thereof, being partly described in the following deeds, to wit: The deed of Alfred Shorter to the Memphis Branch Railroad & Steamboat Company of Georgia, dated April 2, 1849, and recorded in book F, page 402, of deeds, in Floyd county; also the deed of Alfred Shorter to the Rome Railroad Company, dated May 1, 1866, and recorded in book P, of deeds, pages 302, 303, of Floyd county records; also the deed and agreement between the East Tennessee, Virginia & Georgia Railroad Company and the Rome Railroad Company, dated May 29, 1884, and recorded in book EE of deeds, in Floyd county, page 310; also the deed of J. W. Noble *et al.* to the Rome Railroad Company, dated August 29, 1895, and recorded in book AAA of deeds, page 449, of Floyd county records.

Also that portion of the following tract of land, not already included and described in the tract of eleven (11) acres, above set forth, to wit: All that tract or parcel of land lying in the city of Rome, Floyd county, Georgia, known as the "Turntable" of the Rome Railroad Company, and the land adjacent

thereto, and described in a deed from Alfred Shorter to the Rome Railroad Company, dated May 26, 1879, and recorded in book Z of deeds, p. 515, of Floyd county records, and containing about one-sixth ( $\frac{1}{6}$ ) of an acre, more or less. Also the following tract of land, west of Broad street, in the city of Rome, Floyd county, Ga., to wit: A strip of land fronting on Broad street, and lying between the railroad track now used as the main line of the Chattanooga, Rome & Columbus Railroad Company and the Hamilton Storehouse & Warehouse, together with the side track now located on said land, said strip of land being twenty-five (25) feet wide, measuring from the center of the main line track and running from Broad street back to the street in the rear that leads down to the steamboat wharf.

Also the following real estate, to wit: An undivided one-half interest in the land known as the river depot and steamboat wharf property situated at the junction of the Etowah and Oostanaula rivers, and at the head of the Coosa river, in the city of Rome, in Floyd county, Georgia, together with the right of way for drays, back of what was formerly known as the cotton press, said land being also partly described in a deed made by C. D. Forsyth to the Rome Railroad Company, dated April 11, 1882, and lying between the track used as the main line of the Chattanooga, Rome & Columbus Railroad, west of Broad street, on one side, and the Etowah river, on the other side.

Also an undivided half interest in that tract or parcel of land in the city of Rome, Floyd county, Georgia, at the end of Broad street, between the Rome Railroad right of way and the Etowah river, and between the wharf property on said river and the iron bridge across the Etowah river, together with all the buildings and structures on said land, said property being described in a deed from J. M. Elliott to the Rome Railroad Company, dated February 19, 1883; also all the title, rights, privileges, and uses in and to the main line track west of Broad street, in the city of Rome, which are now held and owned by the Rome Railroad Company; also all that tract of land in the town of Kingston, in Bartow county, Georgia, situated between



the main lines of the Rome Railroad and the Western & Atlantic Railroad, and contained within what is known as the "Y," including also the land and roadbed upon which the tracks are now built and laid which form and bound said "Y," also the lands upon which the section houses of the Rome Railroad are built, and the adjacent lands thereto, and all the rights of way and terminal properties of every kind in the town of Kingston, in said county of Bartow, now held, used, and owned by the Rome Railroad Company.

Also said party of the first part doth hereby assign, set over, and transfer to said party of the second part the following contracts, to wit: The contract between the Rome Railroad Company and the East Tennessee, Virginia & Georgia Railroad Company, contained and set forth in the agreement and deed of said companies, dated May 29, 1884, and recorded in book EE of deeds, p. 310, of records, in Floyd county, Georgia; the contract made between the Rome Railroad Company and the East Tennessee, Virginia & Georgia Railroad Company and T. F. Howell, dated March 7, 1890; the contract between the Rome Railroad Company and H. T. Inman, dated December 17, 1891; the contract between the Rome Railroad Company and VanDyke & Henley, dated December 19, 1891; also all contracts with the Western Union Telegraph Company and with the Southern Express Company; also all contracts with the United States Government for carrying the mail by the party of the first part; also all the rights, benefits, privileges, or usufructs of every character which belong to or might have been enjoyed under the above contracts and under all other contracts by said party of the first part.

To have and to hold all and singular the railroad and premises, and properties and franchises, privileges and rights and contracts hereinbefore granted, bargained, sold, conveyed, released, assigned, set over, transferred and confirmed, and every part and parcel thereof, with all the appurtenances in anywise thereunto belonging and appertaining, unto the Nashville, Chattanooga & St. Louis Railway, the said party of the second part, its successors and assigns, to its and

Franchises  
pass

their own use, benefit, and behoof forever, in fee simple. And the said party of the first part, for itself and its successors, doth hereby covenant that it hath good and sufficient title to the railroad property, rights, and franchises herein and hereby conveyed, and the right to convey the same, and that the same are unincumbered, and that it and its successors will, and do by these presents, warrant and defend the same and every part thereof to the said party of the second part, its successors and assigns, against the claims of all persons whatsoever.

And the said party of the first part doth also hereby covenant and agree, that it shall and will at any time, and from time to time hereafter, upon request made, do, execute, and deliver all such further and other acts, deeds, and things, as shall be reasonably advised or required to effectuate the intention of these presents, to assure and confirm to the said party of the second part, its successors and assigns, all the property and estate and rights, privileges, and franchises, hereinbefore described, and being intended to be granted and conveyed.

In witness whereof, the Rome Railroad Company, the said party of the first part, pursuant to the orders and resolutions of its convention of stockholders and its board of directors, hath caused this instrument to be signed by its president and attested by its secretary and its corporate seal to be hereunto affixed, the day and year first above written.

THE ROME RAILROAD COMPANY.

[SEAL.]

By W. W. BROOKES, *President*.

Attest: THE ROME RAILROAD COMPANY,

By J. H. AMBROSE, *Secretary and Treasurer*.

Signed, sealed, and delivered by the Rome Railroad Company by W. W. Brookes, president of said company, this the thirty-first day of December, 1896, at Rome, Ga., in the presence of each of us.

JOHN H. REYNOLDS,

[SEAL.]

B. I. HUGHES, *N. P. F. C., Ga.*

Signed, sealed, and delivered by the Rome Railroad Company by J. H. Ambrose, secretary and treasurer of said com-

pany, this the fourth day of January, 1897, at Nashville, Davidson county, Tennessee, in the presence of each of us.

Witness: WM. B. SHELTON, *Deputy Clerk,*

J. B. ARMSTRONG,

[SEAL.]

P. A. SHELTON,

*Clerk County Court Davidson Co., Tenn.*

STATE OF TENNESSEE, )  
Davidson County. )

I, P. A. Shelton, clerk of the county court, do hereby certify that the county court of Davidson county is a court of record, with a seal thereto attached. I further certify that J. H. Ambrose, secretary and treasurer of the Rome Railroad Company, who is known to me, personally appeared before me, on this the fourth day of January, 1897, and signed and executed the foregoing instrument, in the presence of J. B. Armstrong and myself.

Witness my hand and seal of said court affixed hereto.

[SEAL.]

P. A. SHELTON,

*Clerk County Court Davidson Co., Tenn.*

The above deed was registered in the clerk of superior court's office, in Floyd county, in book CCC, of deeds, p. 96, No. 60; and in Bartow county, in book GG, p. 409-414.

# **AMENDMENT TO CHARTER OF ROME RAILROAD COMPANY AUTHORIZING IT TO SELL ITS ROAD, ETC.**

## **Petition of the Rome Railroad Company for amendments to its charter.**

*To the Honorable the Secretary of State of Georgia:*

The petition of the Rome Railroad Company respectfully shows:

1. That it is a railroad corporation owning and operating a railroad from the city of Rome to Kingston, Georgia, with its principal office at Rome, Georgia, and was duly incorporated in the State of Georgia under the act of the general assembly of said state, approved December 21, 1839, entitled "An act to incorporate the Memphis Branch Railroad & Steamboat



Company of Georgia," and various subsequent amendments thereto enacted by the general assembly of said state, approved on the following dates, to wit: Twenty-ninth day of December, 1847; sixteenth day of January, 1850; twelfth day of December, 1866; twenty-fourth day of August, 1872; and sixteenth day of October, 1889; the said last named act of October 16, 1889, however, never having been accepted nor adopted by petitioner as an amendment to its charter, and the same being inoperative and null and void.

2. That petitioner, the Rome Railroad Company, desires an amendment to its charter granting to petitioner the corporate authority and power to sell and convey its railroad and all its property and franchises to any other railroad company, as now is or may hereafter be authorized or allowed by the provisions of the constitution and laws of this state.

3. Petitioner desires also an amendment to its charter by having granted to petitioner all the powers and rights and privileges granted to similar corporations set forth and contained in section 13 and in section 18 of the acts of the general assembly of the State of Georgia, approved December 17, 1892, and known as the general act for incorporation of railroads, etc., the same being entitled, "An act to carry into effect article 3, section 7, paragraph 18, of the constitution of this state, in so far as the same relates to the issuing and granting corporate powers and privileges to railroad companies by the secretary of state; to define the powers, rights, privileges, immunities, and liabilities of such railroads; to regulate the same; to provide for the consolidation of the same; to build branches and make extensions thereof; to enable the same to run navigation lines in connection therewith; to provide for the purchase or lease of one railroad by another; to grant renewals of charters, and for other purposes."

4. Petitioner pays the fee as by law provided, and also files herewith, along with this petition, and annexed thereto, a certified abstract from the minutes of the Rome Railroad Company, marked exhibit "A," showing that this application for amendment has been duly and legally authorized by all the stock-

holders of the corporation at a stockholders' meeting of the said Rome Railroad Company, held at Rome, Georgia, the principal office of the company, on the twenty-fourth day of December, 1896.

Petitioner further shows that at said meeting, each and every share of the capital stock of the corporation, to-wit: 2,501  $\frac{1}{8}$  shares, was duly present and represented, in person and by proxy, and was unanimously voted for the passage and adoption of the resolutions contained in the certified abstract from the minutes hereto attached and marked exhibit "A." Wherefore your petitioner, the Rome Railroad Company, having duly complied with the requirements of law, now hereby set forth and certified its intention and desire to obtain and adopt as amendments to its charter, the corporate authority, powers, rights, and privileges set forth above in paragraphs 2 and 3 of this petition, and prays that a certificate may issue to the Rome Railroad Company granting to it and conferring upon it the corporate authority and power to sell and convey its railroad and all its property and franchises to any other railroad company as now is or may hereafter be authorized or allowed by the provisions of the constitution and laws of this state.

Also all the powers and rights and privileges granted to similar corporations set forth and contained in section 13 and in section 18 of the act of the general assembly of the State of Georgia, approved December 17, 1892, and entitled "An act to carry into effect article 3, section 7, paragraph 18, of the constitution of this state, in so far as the same relates to the issuing and granting corporate powers and privileges to railroad companies by the secretary of state; to define the powers, rights, privileges, immunities, and liabilities of such railroads; to regulate the same; to provide for the consolidation of the same; to build branches and make extensions thereof; to enable the same to run navigation lines in connection therewith; to provide for the purchase or lease of one railroad by another; to grant renewals of charters, and for other purposes."

And petitioner prays that it may thus acquire the corporate

authority, powers, rights, and privileges above set forth, and as by law in such cases provided.

ROME RAILROAD COMPANY,

By W. W. BROOKS, *President*.

Attest: J. H. AMBROSE,

*Secretary of Rome Railroad Company.*

“EXHIBIT A”—STOCKHOLDERS’ MEETING.

OFFICE OF THE  
ROME RAILROAD COMPANY,  
ROME, GA., Dec. 24, 1896.

On motion, the following resolutions were unanimously adopted, the entire capital stock of the company, to wit, 2,501  $\frac{7}{16}$  shares being present and represented in person and by proxy, and each and every share being voted in favor of the adoption and passage of the resolutions:

*Resolved*, That the Rome Railroad Company, by the unanimous vote of all its stockholders, this day in convention assembled, desires to obtain and accept amendments to its charter conferring upon it the corporate authority and powers to sell and convey its railroad and all its property and franchises to any other railway company not repugnant to the provisions of the constitution of this state. Also to have granted to it and conferred upon it all the powers and rights and privileges granted to similar corporations set forth and contained in section 13 and in section 18 of the act of the general assembly of the State of Georgia, approved December 17, 1892, and known as the general act for incorporation of railroads, etc., the same being entitled “An act to carry into effect article 3, section 7, paragraph 18, of the constitution of this state, in so far as the same relates to the issuing and granting corporate powers and privileges to railroad companies by the secretary of state; to define the powers, rights, privileges, immunities, and liabilities of such railroads; to regulate the same; to provide for the consolidation of the same; to build branches and make extensions thereof; to enable the same to run navigation lines in connection therewith; to provide for the purchase or lease of one railroad by another; to grant renewals of charters, and for other purposes.”



*Resolved further*, That a petition is hereby directed to be filed to the secretary of state of Georgia, by the president of this company, for and on its behalf, setting forth the desire of the Rome Railroad Company to obtain and accept as amendments to its charter, the authority and power to sell and convey its railroad and all its property and franchises to any other railroad company not repugnant to the provisions of the constitution of this state. Also, to obtain all the powers, rights, and privileges set forth and contained in sections 13 and 18 of the above named act, approved December 17, 1892, and praying for the issuance of the necessary certificate to the Rome Railroad Company granting the desired amendments and conferring upon it the authority and powers asked for; and the said president is hereby specially directed and empowered to take all necessary steps to carry these resolutions into effect and to obtain the desired amendments to the charter of this company.

I, J. H. Ambrose, secretary of the Rome Railroad Company, do hereby certify that the foregoing is a true copy of resolutions adopted at a meeting of the stockholders of the Rome Railroad Company, held at Rome, Georgia, on the twenty-fourth day of December, 1896, and that the above is a true and correct abstract from the minutes of said stockholders' meeting.

In witness whereof, I have hereunto affixed my official signature and attached the seal of the company, this twenty-sixth day of December, 1896.

J. H. AMBROSE,

[SEAL.]

*Sec'y Rome Railroad Company.*

OFFICE OF  
SECRETARY OF STATE,  
ATLANTA, GA.

Filed December 30, 1896. Recorded February 1, 1897.

H. W. THOMAS, *Clerk.*

STATE OF GEORGIA,  
OFFICE OF SECRETARY OF STATE,  
ATLANTA.

*To Whom it May Concern—Greeting:*

The Rome Railroad Company, a corporation created by an act of the general assembly of this state, approved December 21, 1839, and acts amendatory thereof, approved January 16,

1850, December 12, 1866, and August 24, 1872, having petitioned for an amendment of the charter of said corporation, in terms of the law, in such cases made and provided; the corporate powers and privileges set out in the thirteenth and eighteenth sections of an act approved December 17, 1892, entitled "An act to carry into effect article 3, section 7, paragraph 18, of the constitution of this state," etc. (also such power and authority to sell and convey its railroad and all of its property and franchises to any other railroad company as now is or may hereafter be authorized or allowed by the constitution and laws of this state), providing for the grant of corporate powers and privileges by the secretary of state to railroad companies, are hereby conferred upon the said Rome Railroad Company.

Witness my hand and the seal of this state, this thirtieth day of December, 1896.

ALLEN D. CANDLER,

*Secretary of State.*

1. The powers and privileges contained in sections 13 and 18 of the act approved December 17, 1892, above referred to, are fully set out in note 3 to section 2 of the charter of the Rome Railroad Company in preceding chapter.

2. The petition and amendment above set out are registered in the secretary of state's office in Atlanta, Ga.

### **Charter amended; route; time for completing road extended.**

*Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same,* That the railroad authorized and directed by the third section of said act, shall be constructed from such point on the Western & Atlantic Railroad, to Rome, in Floyd county, and by such route as may be deemed most practicable and expedient; and that said company may or may not carry said road beyond Rome, as they may deem proper. And that said company shall have until the year 1850 for the completion of said road to Rome. (Acts Ga., 1845, p. 145; approved December 29, 1845.)

### **Charter amended; capital stock increased; value of shares; qualification of directors.**

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and*

*it is hereby enacted by the authority of the same,* That the capital stock of the Memphis Branch Railroad & Steamboat Company of Georgia shall be \$100,000 in shares of one hundred dollars each, with power, after the completion and equipment of said road, to increase the said capital stock to an amount not exceeding the actual cost of the road and outfit.

SEC. 2. *Be it further enacted, etc.,* That, to qualify a stockholder for a director in said company, he shall hold twenty shares of stock in said company, instead of fifty shares, as provided by the charter of which this is amendatory.

SEC. 3. *And be it further enacted, etc.,* That all laws and parts of laws militating against this act be, and the same are hereby, repealed. (Acts Ga., 1847, p. 170; approved December 29, 1847.)

### **Charter amended; name changed to Rome Railroad Company.**

WHEREAS, By virtue of an act of incorporation, passed the twenty-first day of December, 1839, and amendments thereto, a company, consisting of Wm. R. Smith, Alfred Shorter, John P. Eve, John P. King, Daniel R. Mitchell, and others, was duly organized under the corporate name and style of the Memphis Branch Railroad & Steamboat Company of Georgia:

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Georgia in General Assembly met, and it is hereby enacted by the authority of the same,* That William R. Smith, Alfred Shorter, John P. Eve, J. W. M. Berrien, John P. King, and others, the present stockholders, and their successors and assigns, proprietors of the railroad contract and leading from Kingston to Rome, in this state, be hereafter known and recognized as a body politic and corporate by the name and style of the Rome Railroad Company, with all powers, privileges, and liabilities contained in the act aforesaid; and all contracts or causes of action, heretofore or hereafter made accruing, the said company shall, by the said name of the Rome Railroad Company, sue and be sued, anything in the original act of incorporation to the contrary notwithstanding. (Acts Ga., 1849-50, p. 243; approved January 16, 1850.)



**Charter amended, adding word "trustee" in eighth section of charter.**

SECTION 1. *Be it enacted, etc.*, That the eighth section of an act entitled "An act to incorporate the Memphis Branch Railroad & Steamboat Company of the State of Georgia," assented to December 21, 1839, be so amended as to read after the words "or as administrator, executor, or guardian," as follows: "Or as administrator, executor, guardian, or trustee."

SEC. 2. Repeals conflicting laws. (Acts Ga., 1866, p. 128; assented to December 12, 1866.)

**Charter amended; authorized to consolidate with Memphis Branch Railroad Company.**

SECTION 1. *Be it enacted, etc.*, That the Rome Railroad Company may, at any time hereafter, consolidate its stock and franchises with the Memphis Branch Railroad Company, by and with the consent of the stockholders of both of said companies, and, when said consolidation is made, the consolidated company shall assume the corporate name of "The Memphis Branch Railroad Company."

SEC. 2. *Be it further enacted*, That all the privileges, rights, and immunities heretofore granted, or which may hereafter be granted, to either of said companies shall continue and appertain and belong to the consolidated company.

SEC. 3. *Be it further enacted*, That all laws and parts of laws militating against this act be, and the same are hereby, repealed. (Acts Ga., 1870, p. 360; approved October 27, 1870.)

The Memphis Branch Railroad Company was chartered by Acts Ga., 1868, p. 111, and was also given the power to consolidate. Its charter was amended by Acts 1870, pp. 337, 338; Acts 1872, p. 365, and Acts 1871-2, p. 196.

**Authorized to use common tracks, etc., with certain roads, when and where.**

SECTION 1. *Be it enacted by the General Assembly of the State of Georgia*, That the Rome Railroad Company, the Selma, Rome & Dalton Railroad Company, and the Memphis Branch Railroad Company, or any two of them, be, and they

are hereby, authorized to use in common the right of way, yards, and track upon the franchise heretofore granted to the Rome Railroad Company, from the junction of the Etowah and Oostanaula rivers to the point where the track of the Selma, Rome & Dalton Railroad, as now laid, diverges from the track of the Rome Railroad, near the northern or eastern limits of the city of Rome, upon such terms as the respective parties have agreed or may agree upon with the said Rome Railroad Company as compensation for such joint use of its franchises, and upon obtaining the assent of the Rome Railroad Company thereto.

SEC. 2. *Be it further enacted*, That each of said companies shall be liable to parties aggrieved by violation of contracts or torts committed by it, and shall not be liable in any covenant or for any damage or in any tort, for the act or acts or omission of either of the others or their servants.

SEC. 3. *Be it further enacted*, That it shall and may be lawful for the said Rome Railroad Company to make a similar contract, with a like effect in all respects, with the North & South Railroad Company, the Lookout Mountain Railroad Company, or any other railroad connecting at Rome, which may be hereafter constructed, for a like common use of the railroad yard and right of way, at or near Rome, of said first named company, upon such terms as may be agreed upon by the respective parties at interest.

SEC. 4. Repeals conflicting laws. (Acts Ga., 1872, p. 365; approved August 24, 1872.)

#### OTHER ACTS OF GEORGIA RELATING TO ROAD.

1. Acts Ga., 1889, p. 282, approved October 16, 1889, grants certain rights, powers, and privileges to the company, but, by section 7 of said act, the same was rendered void unless certain conditions were complied with. The conditions were never performed, and the act became a nullity. It is therefore here omitted.

2. By Acts Ga., 1869, p. 204, approved March 18, 1869, certain commissioners were appointed to negotiate for the purchase of this road for the State of Georgia, but no trade was consummated, and the act is here omitted.

## CHAPTER XXXIV.

## MIDDLE TENNESSEE &amp; ALABAMA RAILWAY COMPANY.

[FORMERLY THE DECATUR, CHESAPEAKE & NEW ORLEANS RAILWAY CO.  
NOW FORMS EXTENSION OF SHELBYVILLE BRANCH  
SOUTH INTO ALABAMA.]

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—On July 20, 1887, the Decatur, Chesapeake & New Orleans Railway Company was chartered under the general Acts of Tennessee, 1875, ch. 142, to run from the Alabama state line to Gallatin, Tennessee, connecting at the line of Lincoln county and the State of Alabama with a railroad projected by a corporation chartered under the general laws of Alabama, to extend from Decatur to the said state line, and which two corporations formed, in reality, the said Decatur, Chesapeake & New Orleans Railway Company. The Tennessee charter was registered July 28, 1887, in the office of the secretary of state of Tennessee, in book F, p. 157; in the register's office of Lincoln county, in trust deed book No. 8, pp. 22–31. The Alabama charter was registered in the office of the secretary of state of Alabama, in corporate book "C," pp. 126–129.

Copies of both the Tennessee and Alabama charters may be found further on in this chapter.

On June 25, 1889, the said Decatur, Chesapeake & New Orleans Railway Company executed to the American Loan & Trust Company of New York, as trustee, a mortgage or deed of trust known as its *first* mortgage, conveying its entire railway, properties, etc., to secure an issue of \$3,000,000 bonds, of which number \$1,330,000 were subsequently issued.

Default being made in the payment of the coupons, a bill was filed by the said trustee in the circuit court of the United States in Tennessee and Alabama, to foreclose said mortgage, which suit was prosecuted to completion by the "State Trust Company" as a successor trustee.



On November 16, 1892, a decree of foreclosure and sale was entered in the said circuit court of the United States for the middle district of Tennessee, at Nashville, and on November 23, 1892, a similar one was entered in the circuit court of the United States for the northern district of Alabama.

On January 2, 1893, the railroad, properties, etc., were sold at public auction in conformity with the terms of the decree, and were purchased by J. Edward Simmons, Daniel Lord, Garrett A. Hobart, R. D. Warren, Ernest Coldwell, John T. Crass, and David Wilcox, as trustees, under and in pursuance of a certain plan of reorganization of the said Decatur, Chesapeake & New Orleans Railway Company.

This sale was confirmed by decree of the federal court, and, on January 7, 1893, Henry M. Doak, master commissioner of the circuit court for the middle district of Tennessee, at Nashville, executed a deed to the said J. Edward Simmons *et al.*, of the railroad properties, franchises, rights, privileges, etc., of said Decatur, Chesapeake & New Orleans Railway Company. Said deed was registered in the register's office of Bedford county, Tenn., February 20, 1893, in deed book No. "1," p. 544; in Moore county, Tenn., February 23, 1893, in deed book No. 5, p. 121; in Lincoln county, Tenn., March 11, 1893, in deed book "Z," p. 581.

On January 31, 1893, the said J. Edward Simmons *et al.*, composing the reorganization committee as aforesaid, met in Nashville for the purpose of becoming incorporated as the purchasers of the property and franchises of said railroad company, and, to this end, filed, on February 24, 1893, a certificate in the office of the secretary of state of Tennessee, under the provisions of § 1514 of the code of Tennessee (Shannon's), and of the Acts of Tenn., 1877, ch. 12, sec. 2; 1885, ch. 84.

Certificates for a similar purpose were filed with the secretary of state of Alabama, on March 9, 1893, under § 1596 *et seq.*, of the Code of Alabama, 1886, and § 1181 *et seq.* of Code of 1896.

Corporations organized by purchasers succeed to franchises and powers of old corporation, but as to ownership of property and liabilities, it is a new one. 61 Ala., 559.

The name chosen for the new corporation was "The Middle Tennessee & Alabama Railway Company."

On March 20, 1893, J. Edward Simmons *et al.* transferred and conveyed to the said Middle Tennessee & Alabama Railway Company the railroad, properties, franchises, rights, privileges, etc., so acquired by them. This deed was registered in the register's office of Lincoln county, on July 31, 1896, in deed book No. "D D," pp. 129-134.

On December 19, 1893, the Middle Tennessee & Alabama Railway Company executed a mortgage to secure \$350,000 of bonds on its railroad, right of way, properties, franchises, rights, privileges, etc., to the State Trust Company, as trustee. The bonds so secured were known as its *first* mortgage bonds.

On December —, 1893, a second mortgage was executed by the company to secure an issue of \$750,000 of bonds, pledging the same property, subject, nevertheless, to the *first* mortgage. The State Trust Company was again made trustee.

Default having been made in the payment of the coupons on the foregoing bonds, a foreclosure bill was filed in the circuit court of the United States for the middle district of Tennessee, at Nashville, and a supplemental bill filed January 25, 1897. Such proceedings were had and entered that on March 8, 1897, a decree of sale was entered at Nashville, authorizing the special master to sell said railroad properties, easements, rights of way, franchises, privileges, immunities, etc. Said decree is entered in minute book "B B," pp. 122-130, of the United States circuit court at Nashville. A decree of sale was also entered March 25, 1897, in the United States circuit court for the northern division of the northern district of Alabama, in said case, the same being in the nature of an ancillary proceeding filed in said latter court.

The special master, after advertising said property as required by the decree, offered the same for sale at public outcry on May 5, 1897, and Joseph Dickson became the purchaser at the sum of \$150,000, as will fully appear in the master's report filed in book "B B," pp. 216-223, at Nashville.

On May 17, 1897, H. M. Doak, the special master, under

the power in him vested by decree, executed a deed to Joseph Dickson, of said railroad, properties, easements, franchises, etc. Said deed was properly registered in the register's office of Bedford county, in book No. 5, p. 54; in Moore county in book No. 6, pp. 236-244; in Lincoln county in deed book No. "E E," pp. 85-91; and in the office of the judge of probate court of Madison county, Alabama, in vol. 80 of deeds, p. 429.

On October 13, 1897, Joseph Dickson and wife sold the railroad, easements, properties, franchises, etc., to the Nashville, Chattanooga & St. Louis Railway. The deed was registered March 12, 1898, in Bedford county, Tenn., in book 5, p. 394; in Moore county, Tenn., on March 14, 1898, in book 6, p. 406; in Lincoln county, Tenn., March 14, 1898, in book "F F," p. 27; in Madison county, Ala., March 15, 1898, in vol. 83 of deeds, p. 231; in Limestone, Ala., March 19, 1898, in vol. 58 of deeds, p. 379. A copy of the deed may also be found in the next chapter herein.

1. **The sale carried bonds.**—In selling the railroad, properties, etc., Joseph Dickson also delivered up to the Nashville, Chattanooga & St. Louis Railway all the first mortgage bonds issued save one, and over five-sixths of the second mortgage bonds, as well as all the uncertified bonds of both the first and second mortgages.

2. See deed of Dickson to Nashville, Chattanooga & St. Louis Railway in next chapter.

3. **Legality of purchase.**—The Nashville, Chattanooga & St. Louis Railway had the authority to make this purchase under Acts Tenn., 1877, ch. 20, which provided that "any railroad corporation which had been created, or whose corporate existence has been recognized, by any act of the legislature of this state, is hereby authorized and empowered to become purchaser of any railroad sold in this or any adjoining state, under any judicial proceeding in such state, or sold by any person or persons, natural or corporate, who may have purchased or derived title under or from any such judicial sale." Acts Tenn., 1877, ch. 20; Shannon's Code, § 1511. As the Nashville, Chattanooga & St. Louis Railway purchased the road from Joseph Dickson, who had, in turn, purchased it at judicial sale, as heretofore explained, this act should be the controlling one. See, also, Acts Tenn., 1871, ch. 69; Shannon's Code, § 1509; Acts 1881, ch. 9; Acts 1891, ch. 61; Acts 1891, ch. 125; Code (S.), § 1521.

In *Alabama* the authority was conferred by § 1586 of Code of 1886, as amended by Acts 1890-91, ch. 586; Acts 1888-89, p. 75. See, also, Acts 1890-91, pp. 568, 1086; Acts 1886-87, p. 63; Code 1886, § 1587; Code 1896, § 1170.



**What franchises passed under this sale.**—In addition to the road, property, right of way, etc., therein conveyed, the deed specifically transferred all rights, privileges, and *franchises* of the old Decatur, Chesapeake & New Orleans Railway Company, and of the Middle Tennessee & Alabama Railway Company, its successor. See deed in next chapter.

For an enumeration of the franchises, etc., see Tennessee and Alabama charters further on in this chapter.

**Distance road built when purchased.**—As will be seen from the Alabama charter further on in this chapter, the road was authorized to be constructed from the Mississippi state line to the Tennessee river, at the town of Decatur or New Decatur, thence across the Tennessee river to a point on the boundary line of the State of Tennessee; thence by the Tennessee charter through Fayetteville, Shelbyville, and Murfreesboro to Gallatin, Tennessee.

When the Nashville, Chattanooga & St. Louis Railway purchased the road, only that part from Fayetteville, Tennessee, south to Madison Cross Roads, Alabama, a distance of 27.4 miles, was completed and in operation. From Madison Cross Roads to Jeff, a distance of 30.4 miles, the track had once been laid, but when purchased by the Nashville, Chattanooga & St. Louis Railway the ties and bridges were gone, and nothing but the rails remained. The same condition existed as to that part of the road from the Moore county line to Fayetteville, a distance of 13.5 miles. From Shelbyville south across Duck river, 2.1 miles, the track had been laid, but was not safe for engines to run over. From this point to the Moore county line, a distance of 12.4 miles, the trestle work was completed, but the grading was not. From Jeff to Decatur Junction, a distance of 20 miles, the grading had at one time been almost completed, but nothing else done.

1. **Right to remove rails on parts of road not in use.**—The Nashville, Chattanooga & St. Louis Railway, as the legal purchaser of the property, right of way, privileges, and *franchises* of this road, will be entitled at any time to remove the rails, cross-ties, trestles, bridges, piers, and, in fact, all superstructures off those parts of the right of way which had not been completed, or upon which trains could not run when the purchase was made. This is too clear for argument, and would be so whether the railway could be considered in law as having *abandoned* that part of the right of way or not. The railway company, in acquiring the right of way, did not take the *fee*, but simply an *easement*. In laying down the rails, ties, etc., or in building the bridges, it did not attach them to the *fee*, but to the *easement*. If a forfeiture or *abandonment* takes place, the *easement* is removed immediately from the *fee*, and with it is carried, of course, all the property *attached thereto*. The landowner, therefore, will have no interest in them, or lien thereon. They will belong to the railway company. This doctrine has been uniformly held in a long and unbroken chain of authorities. 142 U. S., 396 (L. C. P. Co., Book 35, p. 1055); 22 Ohio St., 563; 30 Md., 347; 87 Pa. St., 28.

2. **What constitutes abandonment of right of way.**—For a discussion of this subject, see "Right of Way," "Abandonment," "Franchise," subhead, "*Forfeiture of*," herein. Refer index.

3. **Right of railway to abandon part or whole of right of way.**—Under the general laws of Tennessee there is nothing to prevent a railway company from abandoning its *entire* right of way, though such action would work a forfeiture of its charter. A failure to build the *entire line of road*, as authorized by its charter, however, is not a ground of forfeiture in this state. It is probable, however, that it cannot abandon a part which has actually been constructed and in operation without such result. 24 N. Y., 161; 82 Am. Dec., 205; 17 Am. L. Reg. (N. S.), 266; 113 U. S., 424; Elliott on R. R., § 638; 2 Barn. & Ald., 646; 36 Wis., 467; 20 N. W. Rep., 696; 24 S. E. Rep., 154; 4 Dil., 479; 29 Conn., 538; 142 U. S., 492; but see 12 Gray, 180; 1 Shannon (Tenn.), 511; 120 Ill., 48; Rover on Railroads, 572.

Under the Acts of Tenn., 1887, ch. 39, a railroad company may change either terminus before the final location of the road. This would assist in many cases.

**Width of right of way (in Tennessee).**—The Decatur, Chesapeake & New Orleans Railway Company and its successor, the Middle Tennessee & Alabama Railway Company, were chartered in Tennessee, under the general Act of 1875, ch. 142. In these charters there are no clauses granting specified numbers of feet as a right of way, in the absence of any *contract* with the original landowner, as was done in the charter of the Nashville, Chattanooga & St. Louis Railway. Section 9 of the charter, however, provided that the said company shall have the right to appropriate, as an easement, a right of way not exceeding two hundred feet—one hundred on each side of the center line of said road—over the land of any person through which the line of track may be located. Under this section the Decatur, Chesapeake & New Orleans Railway Company, or its successor, the Middle Tennessee & Alabama Railway Company, could have originally condemned any number of feet up to and including two hundred, for a right of way. Whatever number of feet was originally condemned, however, would now be binding upon the Nashville, Chattanooga & St. Louis Railway. Should no purchase or condemnation have been had at all, then the entry and construction of the road would be regarded as an *appropriation* of so much of the land as the law authorized, which is two hundred feet in Tennessee, and the Nashville, Chattanooga & St. Louis Railway, as the lawful purchaser thereof, would be entitled to that number. 3 Lea (Tenn.), 478. If a purchase or gift from the landowner was made, then, of course, the deed would control if mention is made of the width therein. If no *width* is specified, then the law presumes the statutory width of two hundred feet was intended. 98 Ala., 647. See, also, 3 Lea (Tenn.), 478.

(In Alabama.)—As the charter granted by the State of Alabama conferred upon the company the *powers*, capacities, duties, liabilities, etc., as expressed in ch. 6, title 1, part 2, of the Code of Alabama, reference must be had thereto in ascertaining its power to condemn a right of way. By subsec. 8 of § 1580 of the Code of 1886, or subsec. 8 of the Code of 1896, which is contained in the chapter, title, and part above referred to, the company is given the power to purchase or condemn a right of way not exceeding one hundred feet in width throughout its entire length of road in Alabama. If the landowner executed a deed, therefore, for the right of way, and no mention is made of the *width*, then the law *presumes* the statutory width of one hundred feet was granted. 98 Ala., 647. If the deed or condemnation proceedings provide a *specified* width, then that controls. If there is no deed or *condemnation*, then the entry and construction of the road would doubtless be regarded as an *appropriation* of the statutory one hundred feet. 3 Lea (Tenn.), 476.

1. **Width of right of way from Fayetteville to Madison Cross Roads.**—It will be seen, from the *deed* of Joseph Dickson in the next chapter, that the width of the right of way from Fayetteville, Tenn., to Madison Cross Roads, Ala., is *guaranteed* to be at least thirty feet wide on either side of the center of the road.

2. **Statute of limitations.**—It is possible that the statute of limitations would run against the railway company on this line of road, under the charter of the Decatur, Chesapeake & New Orleans Railway Company or the Middle Tennessee & Alabama Railway Company, if adjoining landowners are allowed to use and occupy adversely a part of the two hundred foot right of way in Tennessee, or the one hundred foot right of way in Alabama, though this question has never been decided. This would more likely be so in Alabama, as § 1187 of the Code of 1896 provides for a forfeiture of franchises by nonuser for five consecutive years. There is no such statute in Tennessee, however, and our courts might not so hold. This cannot happen on the main branch, however, under the charter of the Nashville, Chattanooga & St. Louis Railway. See charter herein, chapter 1. In considering the question, however, attention is called to Acts Tenn., 1849–50, ch. 266, sec. 3, which provides that “all branches of the Nashville, Chattanooga & St. Louis Railway, as may be made, shall have all the rights and privileges, and be placed in all respects on the same footing, as the Nashville, Chattanooga & St. Louis Railway.”

3. **Further discussions.**—For a more extensive discussion of this sub-



ject, together with the right of taking more than two hundred feet in Tennessee or one hundred feet in Alabama, see "Eminent Domain," herein. Refer to *index*.

## ORIGINAL CHARTER OF THE DECATUR, CHESAPEAKE & NEW ORLEANS RAILWAY COMPANY.

[IN TENNESSEE.]

(Chartered under General Acts Tenn., 1875, ch. 142, sec. 6.)

### SECTION 1. Incorporation, name, route, general powers.—

*Be it known*, that J. W. Rowles, Geo. W. Morgan, J. H. Holman, F. G. Buchanan, G. C. Sandusky, R. P. Frierson, Joe D. Wilhoite, W. W. Gill, B. M. Tillman, W. A. Frost, citizens of the State of Tennessee, not under the age of twenty-one years, are hereby constituted a body politic and corporate by the name and style of "The Decatur, Chesapeake & New Orleans Railway Company," for the purpose of constructing a railway from the Alabama state line to Gallatin, in Sumner county, Tennessee, connecting, at the line of Lincoln county and State of Alabama, with a railway projected by a corporation chartered under the laws of Alabama, from Decatur, in said State of Alabama, to said state line, being the southern boundary line of Lincoln county, commencing at a point on said line near a point directly between Decatur, Alabama, and Fayetteville; thence to Fayetteville; thence to Shelbyville, in Bedford county; thence to Murfreesboro, in Rutherford county; and thence to Gallatin, in Sumner county, all within the State of Tennessee.

1. **Charter amended; may change termini.**—By Acts Tenn., 1887, ch. 39, secs. 1, 2, all railroad companies, chartered under the general laws of this state, may, by resolution of board of directors, change either terminus before the final location of the road. See act itself for method.

2. **Arbitration.**—By-laws for arbitration sustained. 7 Pick. (Tenn.), 64.

3. **Branches.**—By Acts Tenn., 1889, ch. 158, all railroad companies, chartered under the general laws, are allowed to build branch roads in certain cases. See act itself for method.

4. **Incorporative name.**—This company was also chartered in Alabama. For charter, see further on in this chapter. It subsequently issued bonds, secured by mortgage, which was foreclosed. At the sale a reorganization committee bought it in, and, as such purchasers, took the

necessary steps to become incorporated, under § 1514 of Shannon's Code of Tennessee, and of § 1598 of the Code of Alabama, 1886, as the "Middle Tennessee & Alabama Railway Company."

**SEC. 2. General powers (continued).**—The general powers of said corporation are to sue and be sued by the corporate name; to have and use a common seal, which it may alter at pleasure; if no common seal, then the signature of the name of the corporation by any duly authorized officer shall be legal and binding; to purchase and hold or receive by gift, in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment, or part payment, of any debt due to the corporation, and sell realty for corporation purposes; to establish by-laws and make all rules and regulations not inconsistent with the laws and the constitution deemed expedient for the management of corporate affairs; to appoint such subordinate officers and agents, in addition to the president and secretary or treasurer, as the business of the corporation may require; to designate the name of the office and fix the compensation of the officer.

**SEC. 3. Special provisions.**—The following provisions and restrictions are coupled with said grant of powers: A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors. The term of all officers may be fixed by the by-laws of the corporation, the same not, however, to exceed two years. The corporation may, by by-laws, make regulations concerning the subscription for or transfer of stock; fix upon the amount of capital to be invested in the enterprise, the division of the same into shares, the time required for payment thereof by the subscribers for stock, the amount to be called for at any one time, and, in case of failure of any stockholder to pay the amount thus subscribed by him at the time and in the amounts thus called, a right of action shall exist in the corporation to sue said defaulting stockholder for the same.

See 3 Hum., 531; 12 Lea, 252; 4 Cold., 101.

**SEC. 4. Directors, quorum of; books.**—The board of directors, which may consist of five or more members, at the option of the corporation, to be elected either in person or by proxy, by a majority of the votes cast, each share representing one vote, shall keep a full and true record of all their proceedings, and an annual statement of receipts and disbursements shall be copied on the minutes, subject at all times to the inspection of any stockholder. The books of the corporation shall show the original or subsequent stockholders, their respective interests, the amount which has been paid on the shares subscribed, the transfer of stock, by and to whom made; also other transactions in which it is presumed a stockholder or creditor may have an interest.

**SEC. 5. Unpaid stock.**—The amount of any unpaid stock due from a subscriber to the corporation, shall be a fund for the payment of any debts due from the corporation, nor shall the transfer of stock by any subscriber relieve him from payment unless his transferee has paid up all or any of the balance due on said original subscription.

See 10 Pickle, 154, 608.

**SEC. 6. Express and implied powers.**—By no implication or construction shall the corporation be deemed to possess any powers except those hereby expressly given or necessarily implied from the nature of the business for which the charter is granted, and by no inference whatever shall said corporation possess the power to discount notes or bills, deal in gold or silver coin, issue any evidence of debts as currency, buy and sell any agricultural products, deal in merchandise, or engage in any business outside the purpose of the charter.

**SEC. 7. Charter may be repealed or amended.**—The right is reserved to repeal, annul, or modify this charter. If it is repealed, or if the amendments proposed, being not merely auxiliary but fundamental, are rejected by a vote representing more than half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications, being fundamental, are accepted by the corporation as afore-



said, in a general meeting to be called for that purpose, any minor, married woman, or other person under disability, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much, if not, then so much as may be its real value in the market on the day of the withdrawal of said stockholders as aforesaid; *Provided*, That the claims of all creditors are to be paid in preference to said withdrawing stockholders.

The charter of the Nashville, Chattanooga & St. Louis Railway cannot be amended without consent of company. See sec. 34 of that charter.

**SEC. 8. Directors, powers of.**—A majority of the board of directors shall constitute a quorum, and shall fill all vacancies until the next election. The first board of directors shall consist of the five or more incorporators who shall apply for and obtain the charter. The said corporation may have the right to borrow money and issue notes or bonds upon the faith of the corporate property, and also to execute a mortgage or mortgages as further security for repayment of money thus borrowed.

**SEC. 9. Condemnation of right of way, two hundred feet.**—The said corporation shall have the right, in pursuance of the general law authorizing the condemnation of private property for works of internal improvement, as set forth in §§ 1325 to 1348 in the code (both inclusive), to appropriate as an easement the right of way, not exceeding two hundred feet, over the land of any person through which the line of the track may be located. Said sections of the code are hereby literally copied and inserted, in the words and figures following:

**SEC. 10 (1325). Land may be taken, how.**—Any person or corporation authorized by law to construct any railroad, turnpike, canal, toll bridge, road, causeway, or other work of internal improvement to which the like privilege is conceded, may take the real estate of individuals not exceeding the amount prescribed by law or by the charter under which the person or

corporation acts, in the manner and upon the terms herein provided. (Iowa Code, 1851, § 759.)

1. **Disability of owner does not affect the right.**—The right to take land under the power of eminent domain is not restricted by any disability of the owner, who is entitled to demand and receive the value of the property, but must show title. 3 Head (Tenn.), 63-65.

2. By Acts Tenn., 1885, ch. 135, the operation of this and succeeding sections was extended so as to apply and include the condemnation and taking of the property, privileges, rights, or easements of private corporations. See act itself for method.

3. By Acts 1889, p. 447, as embodied in Shannon's Code, § 1879, it was made unlawful to construct or use any steam railway on any county road or highway, without the consent of the county court, to be granted in a method therein set out.

**SEC. 11 (1326). Proceedings, etc.**—The party seeking to appropriate such lands shall file a petition in the circuit court of the county in which the land lies, setting forth, in substance: (1) The parcel of land a portion of which is wanted, and the extent wanted; (2) the name of the owner of such land, or, if unknown, stating the fact; (3) the object for which the land is wanted; (4) a prayer that a suitable portion of land may be decreed to the petitioner and set apart by metes and bounds. (Iowa Code, 1851, § 760.)

Petition need not be sworn to.

**SEC. 12 (1327). Notice to answer.**—Notice of this petition shall be given to the owner of the land, or, if a nonresident of the county, to his agent, at least five days before its presentation. (*Ib.*, modified.)

**SEC. 13 (1328). Where owner nonresident.**—If the owner is a nonresident of the state, or unknown, notice shall be given by publication as provided in this code in similar cases in chancery.

**SEC. 14 (1329). Proceedings only bind parties.**—All parties having any interest in any way in such land may be made defendants, and the proceedings will only cover and affect the interest of those who are actually made parties, unborn remain-

der-men being, however, bound by proceedings to which all living persons in interest are parties.

Tenants for life, years, and reversioners are interested parties, and must be compensated. 2 Head, 65, 176.

SEC. 15 (1330). **Writ of inquiry of damages.**—After the requisite notice has been given, if no sufficient cause to the contrary is shown, the court shall issue a writ of inquiry of damages to the sheriff, commanding him to summon a jury to inquire and assess the damages. (Iowa Code, 1851, § 763.)

SEC. 16 (1331). **Clerk to issue writ, sheriff to summon jury.**—By consent of parties, or on application of the plaintiff, unless objection is made by the defendant, the writ of inquiry may be issued by the clerk as of course, after service of notice, on which the sheriff will summon the jury.

SEC. 17 (1332). **Jury to be disinterested.**—The jurors shall not be interested in the same or a similar question, and shall possess the qualifications of other jurors, and may be nominated by the court, selected by consent of parties, or summoned by the sheriff.

SEC. 18 (1333). **Failure to attend.**—If named by the court, and the persons named are unable to attend when summoned, the place of such persons shall be supplied by the sheriff.

SEC. 19 (1334). **Number of jurors; challenges.**—The jury will consist of five persons, unless the parties agree upon a different number; and either party may challenge for cause, or peremptorily, as in other civil cases.

See 11 Heis., 56; 12 Heis., 56, 57.

SEC. 20 (1335). **Notice of taking inquest.**—The sheriff shall give the parties or their agents, if residents of the county, three days' notice of the time and place of taking the inquest, unless the time has been fixed by the order of the court. (Iowa Code, 1851, § 771.)

SEC. 21 (1336). **Jury to be sworn by sheriff.**—The jury, before proceeding to act, shall be sworn by the sheriff fairly and impartially, without favor or affection, to lay off by metes and bounds the land required for the proposed improvement, and to inquire and assess the damages.



**SEC. 22 (1337). To examine ground and assess damages.**—The jury will then proceed to examine the ground and may hear testimony, but no argument of counsel, and set apart by metes and bounds a sufficient quantity of land for the purposes intended, and assess the damages occasioned to the owner thereby. (Iowa Code, 1851, § 768.)

See 3 Lea, 482.

**SEC. 23 (1338). Damages, how estimated.**—In estimating the damages, the jury shall give the value of the land without deduction, but incidental benefits which may result to the owner by reason of the proposed improvement may be taken into consideration in estimating the incidental damages.

For full discussion of this, see "*Eminent Domain*" herein. Refer to index.

**SEC. 24 (1339). Report returned in writing.**—The report of the jury shall be reduced to writing, signed by a majority of the jurors, delivered to the sheriff, and by him returned into court.

**SEC. 25 (1340). Confirmation of report.**—If no objection is made to the report, it is confirmed by the court, and the land decreed to the petitioner, upon payment to the defendants, or to the clerk for their use, of the damages assessed, with costs. (*Ib.*, § 775 modified.)

**SEC. 26 (1341). Exception to report; new writ.**—Either party may object to the report of the jury, and the same may, on good cause shown, be set aside and new writ of inquiry awarded. (Act 1849-50, ch. 72, § 5.)

**SEC. 27 (1342). Appeal; new trial.**—Either party may also appeal from the finding of the jury, and on giving security for the costs, have a trial anew before a jury in the usual way. (*Ib.*, modified.)

See 12 Heis. (Tenn.), 57.

**SEC. 28 (1343). Costs against appellant, when not.**—If the verdict of the jury upon the trial affirms the finding of the jury of inquest, or is more unfavorable to the appellant than the finding of such jury, the cost shall be adjudged against such

appellant; otherwise the court may award costs as in chancery cases. (*Ib.*)

SEC. 29 (1344.) **Appeal does not suspend work, how.**—The taking an appeal does not suspend the operations of the petitioner on the land, provided such petitioner will give bond with good security, to be approved by the clerk, in double the amount of the assessment of the jury of inquest, payable to the defendant, and conditioned to abide by and perform the final judgment in the premises.

SEC. 30 (1345.) **Preliminary surveys, damages.**—A person or company actually intending to make application for the privileges herein contemplated, and entering upon the land of another for the purpose of making the requisite examinations and surveys, and doing no unnecessary injury, is liable only for the actual damage done; and sued in such case, the plaintiff shall recover only as much costs as damages. (Iowa Code, 1851, § 778.)

SEC. 31 (1346.) **Damages to be prepaid, or bond on appeal.**—No person or company shall, however, enter upon such land for the purpose of actually occupying the right of way until the damages assessed by the jury of inquest and the cost have been actually paid, or, if an appeal has been taken, until the bond has been given to abide by the final judgment as before provided.

See 6 Cold., 162; 7 Heis., 518, 535; 13 Lea, 671.

SEC. 32 (1347.) **Owner may have inquest or sue for damages, when; proceedings.**—If, however, such person or company has actually taken possession of such land, occupying it for the purpose of internal improvement, the owner of such land may petition for a jury of inquest, in which case the same proceedings may be had, as near as may be, as hereinbefore provided; or he may sue for damages in the ordinary way, in which case the jury shall lay off the lands by metes and bounds and assess the damages as upon the trial of an appeal from the return of a jury of inquest.

See 2 Head, 174, 665; 3 Lea, 480; 13 Lea, 670.

**SEC. 33 (1348). Limitation of proceedings by owner.—**

The owners of land shall, in such cases, commence proceedings within twelve months after the land has been actually taken possession of and the work of proposed internal improvement begun; saving, however, to unknown owners and nonresidents twelve months after actual knowledge of such occupation not exceeding three years; and saving to persons under disabilities of infancy, coverture, and unsoundness of mind twelve months after such disability is removed, but not exceeding ten years.

See 12 Heis., 623. See also "*Eminent Domain*" herein. Refer to index.

**SEC. 34. Gauge, transportation charges, construction of tracks on highways.**—The corporation is authorized to adopt such gauge as they may prefer. The charge for transportation shall not exceed twenty-five cents per hundred pounds on heavy articles and ten cents per cubic foot on articles of measurement for every hundred miles transported, and four cents per mile for every passenger, with power to make special contracts with shippers on their roads in regard to rate of freight, so as not to exceed the amounts herein designated. The line of track of the road shall be constructed so as not to interfere with convenient travel of the public along the highways, country roads, streets, and alleys of cities, towns and villages, and so as to allow carts, wagons, carriages, and other vehicles conveniently and safely to pass over or under the line of the track, and so as not to intercept traveling on foot or horseback, or in vehicles of any kind, from the necessary and proper use of the public roads, streets or alleys, in the usual and proper mode for their convenience.

By Acts Tenn., 1885, ch. 20, all railroad companies in the state were authorized to select and alter the gauge of their road at pleasure.

**SEC. 35. Crossings; signboards.**—Boards well supported by posts or otherwise shall be placed and constantly kept across each public road, when the same is crossed on the same level by the track of the railway, the boards to be elevated so as not to obstruct travel, and on each side of said boards there shall be printed in large letters, easily to be seen by the traveler,



the words "Railroad Crossing—Look out for the Cars." Said boards need not be put up at the crossing of streets and alleys in cities, towns, and villages, but such railroad company shall be subject to such proper regulations, made by municipal authorities in pursuance of general municipal powers, regulating speed, passage, and flagman in such municipalities and at crossings; and when there are sidings and switches, the whistle shall always be blown at a distance of not less than two hundred and fifty yards from every crossing of a public road. When land on both sides of the track is owned by the same proprietor, convenient crossings shall be made and kept up at the expense of the corporation for the use of said proprietor, and all necessary cow-gaps made.

**SEC. 36. Regulations for running trains; fare must be paid.**—The board of directors shall fix the regular times for the running of trains for the transportation of passengers and property, and shall furnish sufficient accommodation for the safe, comfortable, and convenient transportation, and shall take, transport, and discharge such passengers and property at, from, and to such places on the due payment of freights, tolls, and fare legally authorized to be charged therefor, and, in case of the refusal of said corporation, their officers or agents, to take and transport any passenger, or to deliver the same, or either of them, at the regular and appointed time, such corporation shall pay to the party aggrieved all damages thereby suffered, with costs of suit. If any passenger refuse to pay his toll or fare, the conductor may put him off the cars at any station or convenient point where said passenger can step on land.

**SEC. 37. Prohibited contracts; must receive freight from other roads.**—The corporation shall make no contract giving any person a preference in the speedy shipment of freights. This corporation shall receive on their road full freighted cars from other roads, and transport them, without breaking bulk, to the place of destination, charging for the goods, wares, and merchandise therein no greater rate of freight than is charged for similar goods, wares, and merchandise in their own cars,

and return said cars free of charge; *Provided*, The cars thus to be received are good and substantial; *And also provided*, The distance said wares and merchandise are to be transported is not less than twenty miles.

**SEC. 38. Officers and directors, capital stock, shares, books.**

—The said five or more corporators shall, within a convenient time after the registration of this charter in the office of the secretary of state, select from their number a president, secretary and treasurer, or the last two offices may be combined into one, and shall not necessarily be stockholders, said president and the other corporators to constitute the first board of directors. The board of directors may fix the amount of capital stock of the company and the number of shares into which the same may be divided, and under their direction subscription books may be opened to obtain stock, all other persons having an equal right with said original corporators to subscribe for stock until the full amount of said capital stock is subscribed. When a sufficient amount of stock is subscribed, notice, personal or by advertisement in a newspaper where the principal office of the corporation is to be kept, is to be given of the time and place of an election of officers. The result of all elections is to be determined by a majority of the votes cast, each share to represent one vote.

**SEC. 39. Directors may increase capital.**—The board of directors may at any time increase the capital stock if the necessities of the corporation, in their estimation, require said increase.

**SEC. 40. May enter upon private lands.**—The company, by its officers or agents, may enter upon the lands of private persons for the purpose of making surveys, estimates, and location of route.

**SEC. 41. Shares of stock personalty.**—The stock is to be impressed with the character of personal property.

We, the undersigned, apply to the State of Tennessee, by virtue of the law of the land, for a charter of incorporation for

the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, this twentieth day of July, 1887.

G. C. SANDUSKY,  
JO D. WILHOITE,  
R. P. FRIERSON,  
W. W. GILL,  
B. M. TILLMAN,  
FELIX G. BUCHANAN,  
J. W. RAWLS,  
J. H. HOLMAN,  
G. W. MORGAN,  
W. H. FROST.

STATE OF TENNESSEE, }  
Bedford County. }

Personally appeared before me, Will J. Muse, clerk of the county court of said county, the above named, G. C. Sandusky, Jo D. Wilhoite, R. P. Frierson, W. W. Gill, and B. M. Tillman, the bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained. Witness my hand, at office, twentieth day of July, 1887.

WILL J. MUSE, *Clerk.*

By J. MARSHALL, *D. C.*

STATE OF TENNESSEE, }  
Lincoln County. }

Personally appeared before me, E. S. Wilson, clerk of the county court of Lincoln county, said state, Felix G. Buchanan, J. W. Rawls, J. H. Holman, and G. W. Morgan and W. A. Frost, the bargainors, with whom I am personally acquainted, and acknowledged that they executed the foregoing instrument for the purposes therein contained. Witness my hand, at office, twenty-sixth day of July, 1887. E. S. WILSON, *Clerk.*

The foregoing charter was registered in the register's office of Lincoln county, in Trust Deed Book No. 8, p. 22-31, on July 26, 1887. It was registered in the secretary of state's office at Nashville, Tenn., July 28, 1887, in book "F," p. 157.



# ORIGINAL CHARTER OF THE DECATUR, CHESAPEAKE & NEW ORLEANS RAILWAY COMPANY.

[IN ALABAMA.]

**Preamble.**—STATE OF ALABAMA, MORGAN COUNTY. The subscribers, who are citizens of the county of Morgan, State of Alabama, residing in the towns of Decatur and New Decatur, in said county, are desirous of forming a corporation for the construction, building and operating a railroad having the power and capacity, and subject to the duties and liabilities, expressed in ch. 6, title 1, part 2, of the Code of Alabama.

The powers, etc., contained in chapter 6, title 1, part 2, referred to above, and which are set out in the Code of 1886 as § 1580 *et seq.*, and § 1163 of the Code of 1896, are as follows:

§ 1580. **Powers of the corporation.**—When duly organized, the corporation has power—

1. To have succession, by its corporate name, for the period expressed in the declaration, or, if no period be expressed, perpetually.

2. To sue and be sued, to have a common seal, and to alter the same at pleasure.

3. To hold, purchase, dispose of, and convey such real and personal property as its uses and business may require.

4. To make all needful rules, regulations, and by-laws for the transaction of its business and the management of its affairs.

5. To appoint such officers and agents as it may deem necessary and the nature of its business may require, prescribing their duties, fixing their compensation, and removable at pleasure.

6. To provide for the transfer of its stock, and to make such by-laws as may be deemed necessary for the creation and preservation of a lien upon the stock of stockholders for all indebtedness or liabilities they may incur to or with the corporation.

7. To cause such examination and surveys for its proposed railroad to be made as may be necessary to the selection of the most advantageous route, and, for such purpose, by its officers or agents and servants, to enter upon the lands or waters of any person, but subject to liability for all damages which shall be done thereto.

8. To acquire and hold, by gift or purchase, or in payment of subscriptions for stock, or by condemnation in the mode prescribed by law, such lands as may be necessary for a way and right of way not exceeding one hundred feet in width throughout the entire length of the road, with the right to cut down and remove all such trees and undergrowth outside thereof as might, by falling upon or shading the roadway, injure the same.

9. To acquire and hold, by gift or purchase, or in payment of subscrip-

tions for stock, such other lands, or any interest therein, as may be necessary in making heavy excavations or embankments, or for the purpose of wasting materials from earth excavations, or for borrowing earth or other materials for the construction of embankments, or for the protection and safety of the roadway.

10. To acquire and hold, by gift or purchase, or in payment of subscriptions for stock, lands for building depots, side tracks, machine shops, car factories, and other buildings necessary and incident to its business.

11. To consolidate with any railroad corporation now existing, or which may hereafter be organized under the laws of this state, in the mode and under the conditions and terms hereinafter prescribed.

12. To purchase or lease or to aid in the construction of any railroad connecting with its own road

13. To increase or decrease its capital stock in the mode and upon the terms and conditions hereinafter prescribed.

14. To borrow money for the purpose of building or constructing or operating its road, or for the payment of debts contracted for such purpose, or to secure the payment of debts contracted in the building, constructing, operating, or maintaining its road, and in the carrying on of the business thereof, or in the acquisition of property for its uses, by mortgage or deed of trust of its franchises and its property, real or personal, and for money borrowed, or for any of its debts, may make and issue negotiable bonds, or bills of exchange, or promissory notes in any form, or other proper evidences thereof.

§ 1581. **Right to cross navigable streams; to use, cross or change public roads.**—The corporation is authorized, in the construction of its road, to cross navigable streams or waters, but in the erection and construction of bridges, trestles, or other structures, must not impair the navigation of such streams or waters; and the corporation is also authorized to use, or to cross, or to change public roads, when necessary in the building, construction, or maintenance of its roadway or track, but must place the public road used, or crossed, or changed, in a condition satisfactory to the authorities of the county having control thereof; but where practicable the track of the railroad must go over or under the public roadway. Code, 1896, § 1163.

**Crossings or intersections of other railroads or street railways.**—By Acts Ala., 1892-93, p. 93, railroad corporations were granted authority "to cross or intersect any railroad or street railway, and if such crossing or intersection cannot be made by contract or agreement with the corporation, association, or person having and controlling the railroad or street railway to be crossed, or with which an intersection is to be made, either party may proceed, in accordance with the provisions of art. 2, title 2, ch. 15. of the Code of Alabama, as amended by an act to repeal § 3210 and to amend §§ 3211, 3212, 3214, 3215, 3216, and 3217 of the Code, approved February 18, 1890, and all other laws relating to the condemnation of lands for public uses (the provisions of which are hereby made applicable) to have an assessment and ascertainment of the damages which may accrue to said corporation or person by reason of said crossing or intersection. The notice required by § 3209 may be served on any agent of said railroad corporation in the county where the proceedings are instituted. Acts Ala., 1892-93, p. 93; Code 1896, § 1165.

§ 1583. **Consolidation of railroad corporations.**—[This section, with

the amendments passed by acts 1886, p. 166, and acts, 1890-91, p. 970, authorized the consolidation of railroad companies by a method therein set out.]

§ 1586. **Aid to, or purchase and lease of, other roads.**—This section, as amended by acts 1890-91, p. 568, provided a method whereby one railroad company could extend aid to another in its construction in order to form a connection, or could lease or purchase another, if their lines were continuous or connected, as well as enter into any arrangement for their common benefit, in a manner therein set out. See section itself, also Code 1896, § 1170.

§ 1587. **Lines may be extended, or branch roads constructed.**—A corporation now existing, or which may hereafter be organized for the building, constructing, and operating a railroad, has authority, for the purpose of extending its line or forming a connection, to acquire, hold, and operate a railroad without the state or within the state, may extend its road, or may build, construct, and operate branch roads from any point or points on its line.

§ 1588. **Mode of making purchase or extension, or of construction of branch roads.**—This section, as amended by Acts 1888-89, p. 75, provided a method whereby one railroad company could purchase, make extensions, or construct branch roads. See section itself; also Code 1896, § 1173.

§ 1589. **Increase of capital stock.**—This section provided for increasing capital stock. See section itself.

§ 1590. **Increase of bonded indebtedness.**—This section provided for increasing the bonded debt. See section itself.

§ 1596. **Purchasers of railroads may organize as a corporation.**—The purchasers of a railroad existing under the laws of this state, not being less than seven in number, at any judicial sale, or other sale by authority of law, made since the adoption of the present constitution, or which may be hereafter made, may organize as a corporation, entitling themselves, their associates and successors, to all the powers, rights, and capacity of a corporation organized under the provisions of this chapter.

§ 1597 et seq. [Provided a *Mode of Organization*.]

1. **May sell all their property, when.**—By Acts 1890-91, p. 1086, railroads chartered under the Alabama laws, whose entire capital stock is owned by a railroad company chartered by another state, are allowed to sell to such company their entire property, roadbeds, rights, and franchises, by a method therein provided.

2. **Railroads chartered in other states may aid in constructing or extending roads in Alabama.**—By Acts 1886-87, p. 63. See act itself.

3. **Franchise forfeited by nonuser for five consecutive years.**—By § 1187 of the Code of Alabama, 1896, the franchise of a railroad company is forfeited by nonuser for five consecutive years.

**Name.**—The name and style of the said corporation\* proposed is “The Decatur, Chesapeake & New Orleans Railway Company.”

\*Filed for record, August 21, 1888; recorded May 3, 1889—C. C. LANGDON, *Secretary of State*.



**Name, incorporation.**—The company was also chartered in Tennessee. See preceding charter. It subsequently issued bonds secured by mortgage which was foreclosed. At the sale a re-organization committee bought in its property, franchises, etc., and as such purchasers took the necessary steps to become incorporated under § 1514 of Shannon's Code of Tennessee and of § 1598 of the Code of Alabama, 1886, as the "Middle Tennessee & Alabama Railway Company."

**Route.**—The terminal points of the proposed road are some point or points on the boundary line of the State of Tennessee, in the county of Lincoln, in said state, separating the said county of Lincoln from the county of Madison, in the State of Alabama, running thence to some point or points on the Tennessee river, in the county of Limestone, in the State of Alabama, opposite to the said town of Decatur, or of New Decatur, and thence across the Tennessee river, to one or both of said towns, and thence south and southwest to the eastern boundary line of the State of Mississippi. The capital stock of said proposed corporation shall be two hundred thousand dollars.

August, 8, 1888. (Signed).

H. M. MOTZ,  
J. R. BOYD,  
S. H. GRUBER,  
A. F. MURRAY,  
J. T. CROSS,  
JOHN S. REED,  
L. M. FULK.

## DECATUR, CHESAPEAKE & NEW ORLEANS RAILWAY.

**Meeting for corporation.**—The commissioners to whom the secretary of state issued a commission authorizing them to open books of subscription to the capital stock of the Decatur, Chesapeake & New Orleans Railway Company, ten per cent. of the proposed capital stock having been subscribed in good faith by subscribers of whose solvency the commissioners were satisfied, called the said subscribers together on this day at the Tavern in the town of New Decatur, and all the subscribers being present in person, the following proceedings were had:

Maj. Gordon moved that Mr. Breck Jones be elected chairman; duly seconded. The vote being taken, Mr. Jones was elected. Mr. Murray nominated Mr. W. W. Hedges for secretary; duly seconded, and Mr. Hedges was duly elected secretary.

The chairman read the commission from the secretary of state to Mr. A. F. Murray, J. T. Cross, etc., as commissioners to open books of subscription, dated December 7, 1888; also the report of the commissioners, which included the subscription list.

It was announced that the articles fixing the capital stock of the company was filed with the secretary of state\* when the application was made. The capital stock was then fixed at \$200,000. The subscription list having been read, and it appearing that more than ten per cent. of the capital stock had been subscribed, and that all subscribers were present, the chairman announced that it would be in order to organize.

Moved by Judge Bond, duly seconded, that we now proceed with the election of the seven directors. Motion carried.

The following subscribers to the capital stock were nominated: A. F. Murray, W. W. Hedges, John S. Reed, J. T. Cross, H. G. Bond, E. C. Gordon, and Breck Jones, and duly elected as directors of the company. The chairman suggested A. F. Murray to receive subscriptions. Duly seconded, and, by vote, Mr. Murray was duly elected.

The chairman suggested that nothing more could be done by the subscribers until the proceedings of this meeting were written out and signed and acknowledged, as provided by law, and, on motion, the meeting adjourned to ten o'clock to-morrow morning, to meet at the office of the president of the land company, in the Bond block in this town.

W. W. HEDGES,  
*Secretary.*

BRECK JONES,  
*Chairman.*

April 25, 1889.

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\*Filed for record, April 27, 1889; recorded May 6, 1889.—C. C. LANGDON, *Secretary of State.*

The subscribers to the capital stock of the said Decatur, Chesapeake & New Orleans Railway met at the Bond block on this the twenty-sixth day of April, 1889, pursuant to adjournment, and, all being present, proceeded to sign and acknowledge the above proceedings.

THE DECATUR LAND, IMPROVEMENT & FURNACE CO.,

By C. C. HARRIS, *President.*

BRECK JONES,

H. G. BOND,

J. T. CROSS,

E. C. GORDON,

W. W. HEDGES,

A. F. MURRAY,

JNO. S. REED.

STATE OF ALABAMA, }  
*Morgan County.* }

This day appeared before me, E. M. Russell, judge of the court of probate of the county of Morgan, State of Alabama, The Decatur Land, Improvement & Furnace Company, by C. C. Harris, president, Breck Jones, H. G. Bond, J. T. Cross, E. C. Gordon, W. W. Hedges, A. F. Murray, John S. Reed, who are known to me personally, and who acknowledged that, being informed of the contents of the foregoing instrument, they signed the same on the day the same bears date.

In witness whereof, I hereunto set my hand and affix my seal of office, this April 26, 1889.

E. M. RUSSELL,

[SEAL.]

*Judge of Probate, Morgan County.*

**Subscribers to capital stock.**—The undersigned hereby subscribe for the number of shares set opposite to their respective names, of the capital stock of the Decatur, Chesapeake & New Orleans Railway Company, a corporation organized under the laws of the State of Alabama, and we respectfully agree to pay for the said shares as required by law, and as payments are called for by the board of directors, and in the manner expressed in the subscriptions.

Decatur Land, Improvement & Furnace Company subscribes



for seventy (70) shares of the par value of one hundred dollars each. This subscription is payable only by a release of the railroad company from all liabilities to the land company for money expended by the land company for the surveys of the route and road of said railroad company, and the maps and profile thereof, and the said release will be executed when the road of said railroad company is completed to a junction with the Memphis & Charleston Railroad Company, and the trains are running into the town of New Decatur. (\$7,000.)

J. N. DOWLAND,

*Secretary.*

C. C. HARRIS,

*President.*

Decatur Land, Improvement & Furnace Company subscribe for one hundred and twenty-five shares, of the par value of one hundred dollars each. This subscription is payable in land, viz.: Twenty-five acres lying in the west half of the northwest quarter of section twenty-six, township five (5), range five (5) west. Bounded on the west by the section line between sections twenty-six and twenty-seven, and extending in the shape of a parallelogram the full length of the tract of land conveyed to this company by Wm. Moseley (through R. C. Brickell, Jas. R. Stevens, and C. C. Harris, trustees, and E. C. Gordon and Ella C. Gordon), of the value of twelve thousand five hundred dollars. The said land to be conveyed to the railroad company when the road of said company is completed to a junction thereof with the Memphis & Charleston Railroad, and the trains of said company are running into the town of New Decatur, Alabama. (\$12,500.)

J. H. DOWLAND,

*Secretary.*

C. C. HARRIS,

*President.*

E. C. Gordon subscribes for one share of the par value of one hundred dollars. This subscription is payable in land, to wit: Lot twenty-nine (29), block ninety (90), of the Wilder addition to New Decatur, Ala., map thereof being dated April, 16, 1888, and filed in the office of the judge of probate Morgan county, Ala. The said land to be conveyed to the railroad company when the road of said company is completed to a juncture thereof with the Memphis & Charleston railroad, and

the trains of said company are running into the town of New Decatur, Alabama. (\$100.00.) E. C. GORDON.

Breck Jones subscribes for one share of the par value of one hundred dollars. This subscription is payable in land, to wit: Lot thirty of block ninety (90) of the Wilder addition to New Decatur, Ala., map thereof being dated April 16, 1888, and filed in the office of the judge of probate of Morgan county, Ala. The said land to be conveyed to the railroad company when the road of said company is completed to a junction thereof with the Memphis & Charleston railroad, and the trains of said company are running into the town of New Decatur, Alabama. (\$100.00.) BRECK JONES.

We, the undersigned, hereby subscribe to the capital stock of the Decatur, Chesapeake & New Orleans Railroad Company, a corporation to be organized under the laws of the State of Alabama, the sum or amount set opposite our respective names, payable only and when the line of said railroad shall be constructed and ready for the running of cars from the town of Decatur to the line of the State of Tennessee.

A. F. Murray, one share.....	\$100 00
W. W. Hedges, one share.....	100 00
John S. Reed, one share.....	100 00
J. T. Cross, one share.....	100 00
H. G. Bond, one share.....	100 00

**Certificate.**—STATE OF ALABAMA, MORGAN COUNTY. Before me, W. T. Mulligan, a notary public and for the said county and state, this day personally appeared Albert F. Murray, who, being duly sworn, deposes and saith that the foregoing is a true and correct copy of the subscriptions to the capital stock of the Decatur, Chesapeake & New Orleans Railway Company; that he was duly elected and appointed by the said subscribers to receive the said subscriptions from the commissioners appointed and commissioned by the secretary of state to open books of subscription to the capital stock of said railway company, and the originals of the said subscriptions affiant has delivered to the secretary of said railway company; that from A. F. Murray, W. W. Hedges, John S. Reed, J. T.

Cross, and H. C. Bond, whose subscriptions are payable in money, affiant received two per cent. on their respective subscriptions in money, which affiant deposited with the secretary of said railway company; that from the Decatur Land Improvement & Furnace Company affiant received covenants in writing for the execution of the release and the conveyance of the land in the subscription of said company specified and described; that from Breck Jones and E. C. Gordon affiant received their respective covenants in writing for the conveyance of the lands in their respective subscriptions described, which said several covenants have been by affiant delivered to the secretary of said company. A. F. MURRAY.

Sworn to and subscribed before me, April 26, 1889.

W. T. MULLIGAN, *Notary Public*.

#### THE STATE OF ALABAMA,

#### OFFICE OF SECRETARY OF STATE.

WHEREAS, A. F. Murray, J. T. Cross, John T. Reed, H. M. Motz, J. K. Boyd, S. H. Gruber, and L. M. Fulk were heretofore, to wit, on the 7th day of December, 1888, duly appointed and constituted a board of commissioners to open books of subscription to the capital stock of the Decatur, Chesapeake & New Orleans Railway Company; and,

WHEREAS, Said commissioners have filed in this office their certificate setting forth that they have in all respects complied with the requirements of section 1578 of the Code of Alabama, and that said Decatur, Chesapeake & New Orleans Railway Company has been organized as provided by said section 1578 of the code:

**Incorporation.**—Now, therefore, I, C. C. Langdon, secretary of state, do hereby certify that the subscribers to said declaration of incorporation, their associates and successors in office, are duly organized as a corporation, under the name and for the purpose set forth in said declaration, and are fully authorized to commence business under their charter, as provided by the laws of Alabama governing the organization of railroad companies.



Witness my hand and the great seal of the state, at the capitol, in the city of Montgomery, this the 27th day of April, one thousand eight hundred and eighty-nine.

[SEAL.]

C. C. LANGDON, *Secretary of State*.

The foregoing charter is registered in the secretary of state's office of Alabama in corporate book "C," p. 126-9.

## CHAPTER XXXV.

## DEED TO AND ACTS RELATING TO DECATUR, CHESAPEAKE &amp; NEW ORLEANS RAILWAY, AND TO ITS SUCCESSOR, THE MIDDLE TENNESSEE &amp; ALABAMA RAILWAY.

JOSEPH DICKSON *et al.*TO—*Deed.*

NASHVILLE, CHATTANOOGA &amp; ST. LOUIS RAILWAY. }

For and in consideration of three hundred of the first consolidated mortgage five per cent. bonds of the Nashville, Chattanooga & St. Louis Railway, of a thousand dollars (\$1,000) each, together with interest thereon, at the rate of five per cent., from July 1, 1897, until this date, paid and to be paid as hereinafter set out, I, Joseph Dickson and Pauline M. Dickson, his wife, both of the city of St. Louis, State of Missouri, have this day bargained and sold, and by these presents do transfer and convey, unto the Nashville, Chattanooga & St. Louis Railway, its successors and assigns, the following described property, lying and being situated in the States of Tennessee and Alabama, and more particularly described as follows:

All the line of railway formerly of the Decatur, Chesapeake & New Orleans Railway Company, situated, lying, and being within the counties of Bedford, Moore, and Lincoln, in the State of Tennessee, and in the counties of Madison, Limestone, and Morgan, in the State of Alabama, constructed and to be constructed between the points hereinafter named, to wit: Beginning at Shelbyville, in the county of Bedford, in the State of Tennessee, and running thence through the counties of Bedford, Moore, and Lincoln to Fayetteville, in the said county of Lincoln, in the State of Tennessee, and running partly through the county of Lincoln, as aforesaid, and through the counties of Madison, Limestone, and Morgan, in the State of Alabama, to Decatur, in said State of Alabama, a total distance of about seventy-eight (78) miles; together with the corporate property of every name, kind, and description at any

Description  
of property.

time owned by the Decatur, Chesapeake & New Orleans Railway Company, or acquired by it, or owned or acquired at any time by the Middle Tennessee and Alabama Railway Company, or used by it or them in constructing, managing, or operating its said line of railway and appertaining thereto; and all estates and interests therein, including all the right of way therefor, and the roadbed of said railway, the entire superstructure thereof and track at any time placed thereon, and all stations, depots, shops, yards, and other ground, at any time used in connection therewith, and all steel and iron rails, ties, railways, sidings, switches, bridges, fences, turntables, water-tanks, viaducts, culverts, passenger and other depots, station houses, warehouses, freight houses, car and engine houses, machine shops, docks, and all other structures, buildings, and fixtures whatsoever; together with all the equipments and rolling stock, locomotives and cars of every description, machinery, tools, implements, and materials formerly of the said Decatur, Chesapeake & New Orleans Railway Company, and thereafter of the Middle Tennessee & Alabama Railway Company, and now owned by the said Joseph Dickson, owned or acquired for constructing, maintaining, operating, replacing, improving or repairing the said line of railway, or its appurtenances, or any part thereof, or in and for the business of said railway; and all the real estate of the Middle Tennessee & Alabama Railway Company or the said Joseph Dickson, wherever the same may be situated in and through said counties and states as aforesaid, now held or acquired by it or him, or any time hereafter held or acquired as a part of said railway, rolling stock, right of way, or appurtenances.

Also all the rights, franchises, privileges, immunities, and easements, and all leases, leaseholds, rights of the use of other railways, and all estates, real, personal or mixed, at any time held or acquired by the said Decatur, Chesapeake & New Orleans Railway Company, or held, owned or acquired by the Middle Tennessee & Alabama Railway Company, or by the said Joseph Dickson, or hereafter held, possessed, or acquired by them, or any one of them, in

**Franchises  
pass.**



connection with said line of railway; and all rents, issues, profits, incomes, and proceeds of the said line of railway, or arising from any of the aforesaid property, together with all and singular the tenements, hereditaments, and appurtenances thereto belonging or in any way appertaining thereto; and all the revenues, reversions, and remainders, choses in action, estates, rights, titles, interests, properties, possessions, claims and demands whatsoever, as well in law as in equity, formerly of the said Decatur, Chesapeake & New Orleans Railway Company, or of the Middle Tennessee & Alabama Railway Company, or of the said Joseph Dickson, in and to the aforesaid property and premises, or any part thereof, and all rights, powers, and privileges and franchises now or at any time hereafter held or acquired by the Middle Tennessee & Alabama Railway Company or the said Joseph Dickson, connected with or relating to said line of railway, or other property hereby conveyed or intended to be conveyed by the deeds of trust, which are ordered to be foreclosed under said decree, for the uses and purposes thereof, or for the construction, maintenance, uses, or enjoyment of the same; and all corporate franchises of the Middle Tennessee & Alabama Railway Company of every nature, including the franchise to be a corporation; also all the lands, tenements, and hereditaments, rights of way, and easements now held or hereafter acquired by the Middle Tennessee & Alabama Railway Company, or the said Joseph Dickson, for the purposes of said line of railway, and for the purposes of depots, stations, turnouts, rights of way, or terminal facilities in connection with said line of railway. It being the same property conveyed to the said Joseph Dickson by H. M. Doak, as special master of the circuit court of the United States for the middle district of Tennessee, and the circuit court of the United States for the northern district of Alabama, by deed dated May 17, 1897, which deed is registered in the R. O. B. C., Tenn., in book No. 5, p. 54; in the R. O. M. C., Tenn., in book No. 6, pp. 236, 244; in the R. O. L. C., Tenn., in deed book No. "EE," p. 85-91; in the judge of probate court of Madison county, Alabama, in vol. 80 of deeds, p. 429, to which reference is also made for a more perfect description.

Together with the right of way over the several tracts of ground conveyed by R. D. Warren and Earnest Caldwell to the said Joseph Dickson by deed dated June 28, 1897, and registered in the register's office of Lincoln county, Tenn., in deed book "EE," p. 67, to which reference is here made for a more perfect description, and which several tracts of ground were also transferred to the said R. D. Warren and Earnest Caldwell by the following mentioned parties:

(1) A right of way through the lands of N. Waites, being sixty-six feet in width, said deed being executed January 25, 1893, and registered in R. O. L. C., Tenn., in deed book "BB," p. 200-1, to which reference is here made for a more perfect description.

(2) A right of way through the lands of James H. Deford, one hundred feet in width, a deed to which was executed January 27, 1893, and registered in the R. O. L. C., Tenn., in deed book "BB," p. 221-2, reference to which is here made for a more perfect description.

(3) A right of way through the lands of M. J. Farrar, being fifty feet in width on either side of center of the track, a deed to which was executed January 27, 1893, and registered in the R. O. L. C., Tenn., in deed book "BB," p. 216-17, to which reference is here made for a more perfect description.

(4) A right of way through the lands of A. N. Bryan, being one hundred feet in width, a deed to which was executed January 7, 1893, and registered in the R. O. L. C., Tenn., in book "BB," p. 219-20, to which reference is here made for a more perfect description.

(5) A right of way over the lands of Rufus Smith, being sixty feet in width, a deed to which was executed January 28, 1892, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 205-6, to which reference is here made for a more perfect description.

(6) A right of way over the lands of D. A. Hobbs, of fifty feet in width, a deed to which was executed January 28, 1893, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 204-5, and to which reference is here made for a more perfect description.

(7) A right of way over the lands of Parkinson and Faulkinberry, of one hundred feet in width, a deed to which was executed January 28, 1893, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 218-19, to which reference is here made for a more perfect description.

(8) A right of way through the lands of Austin Eslick, of sixty-six feet in width, a deed to which was executed January 28, 1893, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 194-5, to which reference is here made for a more perfect description.

(9) A right of way through the lands of R. L. Farrar, of sixty feet in width, a deed to which was executed January 27, 1893, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 193-4, to which reference is here made for a more perfect description.

(10.) A right of way over the lands of M. N. Rowell and N. A. Rowell, of one hundred feet in width, a deed to which was executed January 27, 1892, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 202-3, to which reference is here made for a more perfect description.

(11) A right of way over the lands of W. R. Bryant, of one hundred feet in width, a deed to which was executed January 27, 1893, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 221, to which reference is here made for a more perfect description.

(12) A right of way over the lands of H. D. Parks, of fifty feet in width, a deed to which was executed January 25, 1893, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 189-90, to which reference is here made for a more perfect description.

(13) A right of way over the lands of J. C. Shofner, of one hundred feet in width, a deed to which was executed January 25, 1893, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 190-1, to which reference is here made for a more perfect description.

(14) A right of way over the lands of T. J. Russell and M.



E. Russell, of one hundred feet in width, a deed to which was executed January 25, 1893, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 191-2.

(15) A right of way over the lands of N. C. Sulser, of one hundred feet in width, said deed being executed January 28, 1893, and registered in the register's office of Lincoln county, Tenn., in deed book "B B," p. 201-2, to which reference is here made for a more perfect description.

Of the consideration above referred to, two hundred and seventy-five thousand dollars (\$275,000) of the said bonds, with interest from July 1, 1897, have been delivered and paid to the said Joseph Dickson, the receipt of which is hereby acknowledged, and the remaining twenty-five thousand dollars (\$25,000) of said bonds are to be retained by said Nashville, Chattanooga & St. Louis Railway until all taxes, liens, judgments or decrees existing against said properties herein conveyed, either in the State of Tennessee or Alabama, or in the federal courts, shall have been fully paid off, satisfied and discharged, and until all claims, demands, right of actions that may be a lien on the said properties or enforceable against the said Nashville, Chattanooga & St. Louis Railway by virtue of its having purchased the same, shall have been fully paid off, settled, and discharged by the said Joseph Dickson, and until all the terms, conditions, and provisions of a contract this day entered into between the said Joseph Dickson and the said Nashville, Chattanooga & St. Louis Railway have been fully performed by the said Joseph Dickson. No lien is retained on the road or properties herein conveyed, however, for the payment of said twenty-five thousand dollars (\$25,000) of bonds so retained.

To have and to hold the said line of railway, rights, franchises, privileges, immunities, easements, properties, leases, leaseholds, rights of use of other roads, estates, real, personal or mixed, with its appurtenances, estates, title, and interests thereto belonging to the said Nashville, Chattanooga & St. Louis Railway, its successors and assigns forever.

And we do covenant with the said Nashville, Chattanooga &

St. Louis Railway that we are lawfully seized and possessed of said line of railway, rolling stock, and properties in fee simple, and have a good right to convey them, and the same is unincumbered.

And we do further covenant and bind ourselves, our heirs and representatives, to warrant and forever defend the title to the said rolling stock and to the said line of railway, right of way, privileges and franchises from Fayetteville, Tenn., to Madison Cross Roads, Ala., to the Nashville, Chattanooga & St. Louis Railway, its successors and assigns, against the lawful claims of all persons whomsoever. Warranty.

And we do further covenant and bind ourselves, our heirs and representatives, to indemnify, protect and hold harmless the said Nashville, Chattanooga & St. Louis Railway, its successors and assigns, against all incumbrances or liens against the properties herein conveyed, existing by decree, judgment or petition, in any of the courts of Alabama or Tennessee, or in the federal courts, or any that are prior to the mortgages of the old Middle Tennessee & Alabama Railway Company, under which the foreclosure proceedings were had. Warranty.

We further agree and bind ourselves, our heirs and representatives, to indemnify and protect and hold harmless the said Nashville, Chattanooga & St. Louis Railway against all claims, demands, or rights of action, either of a legal or equitable nature, or which could be enforceable against the said Nashville, Chattanooga & St. Louis Railway by virtue of its purchase of said railway, rolling stock, right of way, real estate, franchises, etc., and further warrant that the right of way from Fayetteville, Tenn., to Madison Cross Roads, Ala., is of the width of at least thirty (30) feet on either side of the center of the road. 30-foot right of way guaranteed, where.

Witness our hands and seals, this the thirteenth day of October, 1897.

JOSEPH DICKSON,

PAULINE M. DICKSON.

STATE OF TENNESSEE, }  
*County of Davidson.* }

Personally appeared before me, John J. Norton, a notary public in and for said county and state, the within named Joseph Dickson and Pauline M. Dickson, the bargainors, with whom I am personally acquainted, and who acknowledged that they executed the within instrument for the purposes therein contained.

And the said Pauline M. Dickson, wife of the said Joseph Dickson, having appeared before me privately and apart from her husband, the said Pauline M. Dickson acknowledged the execution of the said instrument to have been done by her freely, voluntarily, and understandingly, without compulsion or constraint from her said husband, and for the purposes therein expressed.

Witness my hand and official seal, at Nashville, Tenn., this thirteenth day of October, 1897.

[SEAL.]

JOHN J. NORTON, *Notary Public.*

STATE OF TENNESSEE, }  
*Davidson County.* }

I, John J. Norton, a notary public in and for said state and county, hereby certify that Joseph Dickson and his wife, Pauline M. Dickson, whose names are signed to the foregoing conveyance, and who are known to me, acknowledged before me, on this day, that being informed of the contents of the conveyance, they executed the same voluntarily on the day the same bears date.

Given under my hand and seal of office, this thirteenth day of October, A.D. 1897.

[SEAL.]

JOHN J. NORTON, *Notary Public.*

STATE OF TENNESSEE, }  
*Davidson County.* }

I, John J. Norton, a notary public in and for said state and county, do hereby certify that on the thirteenth day of October, 1897, came before me the within named Pauline M. Dickson, known to me to be the wife of the within named Joseph Dickson, who, being examined separate and apart from



the husband touching her signature to the within deed, acknowledged that she signed the same of her own free will and accord, and without fear, constraint, or threats on the part of the husband.

In witness whereof, I hereto set my hand and seal of office, this thirteenth of October, A.D. 1897.

[SEAL.]

JOHN J. NORTON, *Notary Public*.

The foregoing deed is registered in the following counties and states in the books named:

(1) Bedford county, Tenn., March 14, 1898, in book 5, p. 394.

(2) Moore county, Tenn., March, 14, 1898, in book 6, p. 406.

(3) Lincoln county, Tenn., March, 14, 1898, in book "F F," p. 27.

(4) Madison county, Ala., March 15, 1898, in vol. 83 of Deeds, p. 231.

(5) Limestone county, Ala., March 19, 1898, in vol. 58 of Deeds, p. 379.

## DECREE CONFIRMING SALE TO JOS. DICKSON.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE MIDDLE

DISTRICT OF TENNESSEE.

THE STATE TRUST COMPANY, COMPLAINANT, *v.* THE MIDDLE TENNESSEE & ALABAMA RAILWAY COMPANY AND JOSEPH DICKSON, DEFENDANTS.

This cause having been submitted for decree upon the report of the special master, H. M. Doak, heretofore appointed in this cause by this court, and in the cause pending in the circuit court of the United States for the northern division of the northern district of Alabama, which said proceeding is in the nature of an ancillary bill to the bill filed in this court as an original bill; and now, upon motion of counsel on behalf of the complainant, it is ordered, adjudged, and decreed that the said report be, and the same is hereby, in all things confirmed. Master's report confirmed.

And it further appearing to the court from said report, that

Joseph Dickson, the purchaser of said property, having complied with the terms of sale, as provided in the decree of this court and of the circuit court of the United States for the northern division of the northern district of Alabama, it is ordered, adjudged, and decreed that the said H. M. Doak, as such special master, make and execute to the said Joseph Dickson a valid deed of conveyance, vesting him with the title to the properties of said railway company described in the said indentures of mortgage and deeds of trust described in the pleadings in this cause, and more particularly described as follows, to wit:

All the line of railway formerly of the Decatur, Chesapeake & New Orleans Railway Company, situated, lying, and being within the counties of Bedford, Moore, and Lincoln, in the State of Tennessee, and the counties of Madison, Limestone, and Morgan, in the State of Alabama, constructed and to be constructed between the points hereinafter named, to wit: Beginning at Shelbyville, in the county of Bedford and State of Tennessee, and running thence through the said counties of Bedford, Moore, and Lincoln, to Fayetteville, in the said county of Lincoln and State of Tennessee, and running partly through the county of Lincoln, in the State of Tennessee, and through the counties of Madison, Limestone, and Morgan in the State of Alabama, to Decatur, in the State of Alabama, a total distance of about seventy-eight miles.

Together with the corporate property of every name, kind, and description, at any time owned by the Decatur, Chesapeake & New Orleans Railway Company, or acquired by it, or by the Middle Tennessee & Alabama Railway Company, or which may hereafter be held or acquired by the Middle Tennessee & Alabama Railway Company, or used by it in constructing, managing, or operating its said line of railway and pertaining thereto, and all estates and interests therein, including all the right of way therefor, and the roadbed of said railway, the entire superstructure thereof, and track at any time placed thereon, and all station, depot,

shop, yard, and other grounds at any time used in connection therewith, and all steel and iron rails, ties, railways, sidings, switches, bridges, fences, turntables, watertanks, ware-houses, freight houses, car and engine houses, machine shops, docks and all other structures, buildings, and fixtures whatsoever, together with all the equipments and rolling stock and locomotives, cars of every description, machinery, tools, implements and materials, formerly of the said Decatur, Chesapeake & New Orleans Railway Company, and now of the Middle Tennessee & Alabama Railway Company, owned or acquired for constructing, maintaining, operating, replacing, improving, or repairing the said line of railway and its appurtenances, or any part thereof, or in and for the business of said railway, and all the real estate of the Middle Tennessee & Alabama Railway Company wherever the same may be situated, now held or acquired by it, or at any time hereafter held or acquired for the purposes.

Also all the rights, franchises, privileges, immunities and easements, and all leases, leaseholds, rights of use of other railways, and all estates, real, personal, or mixed, at any time held or acquired by the said Decatur, Chesapeake & New Orleans Railway Company, or now held by Franchise, etc., pass. the Middle Tennessee & Alabama Railway Company, or hereafter held, possessed, or acquired by it, in connection with its said line of railway, and all rents, issues, profits, income, and proceeds of the said line of railway, or arising from any of the aforesaid property, together with all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining thereto; and all the reversions, remainder, choses in action, estate, right, title, interest, property, possession, claim, and demand whatsoever, as well in law as in equity, formerly of the said Decatur, Chesapeake & New Orleans Railway Company, and now of the Middle Tennessee & Alabama Railway Company, in and to the aforesaid property and premises, or any part thereof, and all rights, powers, privileges, and franchises, now or at any time hereafter held or acquired by the said Middle Tennessee & Alabama Railway Company, connected with or related to said line of railway, or



other property hereby conveyed, or intended so to be conveyed by the deeds of trust which was ordered to be foreclosed under said decree, for the uses or purposes thereof, or for the construction, maintenance, uses, or enjoyment of the same, and all corporate franchises of the said Middle Tennessee & Alabama Railway Company of every nature, including the franchise to be a corporation.

Also the lands, tenements and hereditaments, rights of way, and easements, now held or hereafter acquired by the said Middle Tennessee & Alabama Railway Company, for the purposes of said line of railway and for the purpose of depots, stations, or terminals in connection with said line of railway.

The said special master in the execution of said deed will convey said property to the said Joseph Dickson as such purchaser, subject to all taxes which may be a lien upon the property sold, and also subject to any valid claims of any intervening creditor which may be determined to have priority over the first and second mortgage bonds, secured by the deeds of trust, described in said decree of foreclosure, and said special master will convey said property without appraisalment or right of redemption on the part of the said Middle Tennessee & Alabama Railway Company, the State Trust Company, or any other holders of the bonds issued under said indentures of mortgage or deeds of trust.

It is further ordered, adjudged, and decreed that from and out of the said fund of twenty thousand (\$20,000) dollars, so deposited with the registry of this court by the said Joseph Dickson, that the clerk of this court pay the costs and expenses incident to this suit and the compensation of the trustee and its solicitors and the receiver and his solicitors, and that from the balance that may be due after the payment of such costs, expenses, and fees, that the said clerk pay to the remaining holders of said bonds the pro rata share due to them, according as the amount thereof bears to the entire issue of said bonds on the basis of said purchase price of one hundred and fifty (\$150,000) thousand dollars, less said costs, expenses, and fees, and the balance thereof shall be paid to the said Joseph Dickson, the purchaser aforesaid,

**Sale subject to  
what liens.**

**Cost to come  
out of funds.**

after an indorsement on said bonds as a partial payment of the amount which should be properly charged against each of said bonds so issued under said indenture of mortgage or deed of trust, when said bonds so owned by said Joseph Dickson shall be surrendered and delivered to said Joseph Dickson by the clerk of this court.

It is further ordered, adjudged, and decreed that the clerk of this court indorse on each of said bonds, as a partial payment thereon, the sum to which the holder or holders thereof will be justly and properly entitled Bonds to be credited and not canceled. to receive as a proportionate disbursement by said clerk from said sum so bid for said railway property, and the sum so indorsed thereon shall serve as a partial and pro tanto payment on said bonds.

It is further ordered, adjudged, and decreed that Gaunt Crebs, the receiver heretofore appointed under the decree of this court in this cause, and under the decree of the circuit court of the United States for the northern division of the northern district of Alabama, surrender and deliver to said Joseph Dickson, the purchaser aforesaid, the said railroad property so purchased by the said Joseph Dickson heretofore under the said decrees committed to the trust, care, and custody of the said Gaunt Crebs as such receiver.

It is further ordered, adjudged, and decreed that the clerk of this court issue to the marshal of this court writs of assistance, and such other remedial writs as may be necessary in the premises, to place the said Joseph Dickson in the full possession and enjoyment of the said properties, according to his purchase and to which he may be entitled Possession to be given. under the decrees of this court and the conveyances so ordered to be executed by the special master to him.

All further questions in this cause are reserved.

May 10, 1897.

Enter this.

CLARK, J.

The special master executed a deed to Joseph Dickson in conformity to the terms of this decree. Said deed was registered in Bedford county, Tenn., in book 5, p. 54; in Moore county, Tenn., in book 6, p. 236-244; in Lincoln county, Tenn., in book "E E," p. 85-91, and in judge of probate court of Madison county, Ala., in vol. 80 of deeds, p. 429.

## CHAPTER XXXVI.

**CHATTANOOGA TERMINAL RAILWAY.**

[Chartered under general Acts of Tenn., 1875, ch. 142.]

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—On July 29, 1895, the Chattanooga Terminal Railway Company, a corporation chartered under the general laws of the State of Tennessee, leased to the Nashville, Chattanooga & St. Louis Railway, for a period of ten years from August 15, 1895, its railroad track and right of way extending from a connection in the city of Chattanooga with the tracks of the said Nashville, Chattanooga & St. Louis Railway, and running northwestwardly toward and near the old Roane Iron Works, on the banks of the Tennessee river, in said city, and as described in a deed from the Southern Iron Company to C. E. James, trustee, which deed was registered in the register's office of Hamilton county, in book "G," vol. 4, p. 463. The consideration agreed to be paid was \$188 per month, so long as its *exclusive* use was enjoyed, or otherwise a pro rata of that amount, as fully set out in the lease, which may be found in the next chapter. The lease was registered in the register's office of Hamilton county, in book "Y," vol. 5, p. 450.

(1) **Legality of lease.**—This lease was valid under Acts Tenn., 1857-58, ch. 8, p. 5, granting authority to the Nashville, Chattanooga & St. Louis Railway to lease any railroad connecting with it for such time and upon such terms and conditions as might be agreed upon. In addition, the power was conferred by Acts Tenn., 1869-70, ch. 49, p. 323, § 4; Acts 1871, ch. 69; Acts 1881, ch. 9, p. 10, § 2; Acts 1891, ch. 61, p. 146, and ch. 125, p. 274.

(2) **Buffalo Iron Company extension.**—Subsequent to the lease above mentioned, the Nashville, Chattanooga & St. Louis Railway leased from the Buffalo Iron Company about three thousand feet of track, extending from the end of the said Chattanooga Terminal Company's tracks to the Tennessee river, at a rental of \$25 per month, and is now operating it in connection therewith. The lease is not in writing, however.



**Distance road built when leased.**—When the Nashville, Chattanooga & St. Louis Railway leased this road it had only been built about 4,675 feet. It commenced on the Nashville, Chattanooga & St. Louis Railway at a point about 600 feet south (by the compass) of Catherine street, in Chattanooga, Tenn.; running thence to Catherine street; thence in Catherine street to Grove street; thence through private property to the north line of the Chattanooga Iron Company's property. Since leasing it, the Nashville, Chattanooga & St. Louis Railway has added nothing to the main line, but has added the following sidings, which are in private property: Ross & Mehan Foundry, 400 feet; Montague Pipe Works, 560 feet; Fayerweather & Ladew Tannery, 390 feet; Walsh & Weidner, 540 feet; total, 1,890.

**Width of right of way.**—As the Chattanooga Terminal Railway Company was chartered under the *general acts* of Tennessee, the width of its right of way would be determined in the same manner as the width of the right of way of the Decatur, Chesapeake & New Orleans Railway Company (in Tennessee), a discussion of which may be found herein on page 411, to which reference is here made.

## ORIGINAL CHARTER OF THE CHATTANOOGA TERMINAL RAILWAY COMPANY.

[Acts Tenn., 1875, ch. 142, § 6.]

**SECTION 1. Incorporation, name, route, general powers.**—*Be it known*, That Napoleon Lodor, H. H. Webster, James R. Whitman, George M. Clark, and Franklin Harris are hereby constituted a body politic and corporate by the name and style of "Chattanooga Terminal Railway Company," for the purpose of constructing a railway from a point on Market street, in the city of Chattanooga, Tenn., at or near the depot in said city known as the Central Depot; thence westward, northwestwardly in a general direction to and across the Tennessee river; thence in a northwestwardly direction through the counties of Hamilton, Marion, Sequatchie, Bledsoe, and Van Buren, in the State of Tennessee. Also of constructing said railway from

the beginning point near the Central Depot in the city of Chattanooga, Hamilton county, Tenn., southwardly to the Georgia State line, to or near the present terminus of the Chattanooga Southern Railway Company.

(Chapter CXIX. of Acts of Tennessee of 1881, "An Act to authorize a corporation to regulate the number of directors thereof," provides, "That all private corporations are hereby authorized to increase or diminish the number of their directors; *Provided*, Such number never be less than five; *Provided, further*, That stockholders representing three-fourths of the stock of any corporation shall vote for such increase or diminution.")

[Sections 2 to 41 inclusive of this charter are the same as those of the Decatur, Chesapeake & New Orleans Railway Company in Tennessee. See page 414 herein. They are here omitted for economy.]

We, the undersigned, apply to the State of Tennessee, by virtue of the law of the land, for a charter of incorporation for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, this fourteenth day of November, 1892.

NAPOLÉON LODOR,

H. H. WEBSTER,

JAMES R. WHITMAN,

GEORGE M. CLARK,

FRANKLIN HARRIS.

Charter, where registered.—The above charter was properly acknowledged and registered in the register's office of Hamilton county, Tenn.—in book "B," vol. 5. p. 671; in the secretary of state's office, in book "S," p. 613.

## CHAPTER XXXVII.

*LEASE CONTRACT OF CHATTANOOGA TERMINAL RAILWAY.*

CHATTANOOGA TERMINAL RY. CO. }  
   TO }  
   N., C. & ST. L. RY. }

This agreement made and entered into this the twenty-ninth day of July, A.D. 1895, by and between the Chattanooga Terminal Railway Company, of the first part, and the Nashville, Chattanooga & St. Louis Railway, of the second part, Witnesseth: That the said first party, in consideration of the sums, terms, provisions, and conditions hereinafter stated, has agreed to lease, and by these presents does lease, to the second party for a period of ten (10) years, from August 15, 1895, the railroad track and right of way known as the Roane Iron Company's railroad track and right of way, extending from a connection in the city of Chattanooga with the railroad track of the said second party, and running <sup>Description of property.</sup> northwesterly toward and near the old Roane Iron Works, on the banks of the Tennessee river in said city, and as described in deed from Southern Iron Company to C. E. James, trustee, and in the plat thereto attached, to be found of record in the office of the register of Hamilton <sup>Route.</sup> county, in the State of Tennessee, in book "G," vol. 4, p. 463, reference to which is here made for a more perfect description of said railroad track and right of way, and the same made a part thereof as fully to all intents and purposes as if set out word for word herein, and as if said plat was hereunto attached, it being intended to include in this lease the whole of



the property conveyed by said deed. The said second party, in consideration of the premises, is to take charge of said leased property on the fifteenth day of August, A.D. 1895, in the condition it is then in, and at the expiration of said ten (10) years is to turn the same over to the said first party, or its assigns or successors, in as good condition and repair as at the beginning of this lease.

The said second party is authorized, at its own expense, to repair, keep in repair, or rebuild the main track on the right of way leased, and to construct such other tracks on said right of way as may be found necessary or desirable, and in so doing to use such parts of the present material as may be necessary; **Improvements** all repairs, additional track, etc., at the termina-  
**belong to** tion of this contract to become and be the property  
**lessor.** of the said first party.

It is further mutually understood and agreed, however, that the said first party reserves, and is at all times to have the right to use, said track or tracks without let or hindrance at the request of the said first party made upon the said second party in connection with any extension it may make of its road beyond the Tennessee river. But in that event the monthly rental hereinafter mentioned, and the said expense of maintaining and keeping in good repair said track and right of way as aforesaid, shall thenceforward be and the same in consideration thereof borne and paid pro rata with the said second party by the said first party, or its assigns, on a wheelage basis.

It is further mutually understood and agreed by and between the parties hereto that the second party, in consideration of these premises, is to pay to the said first party one  
**Rent.** hundred and eighty-eight (\$188.00) dollars in cash per month during the period of ten (10) years aforesaid, or so long as it has the exclusive use of said leased property, and thereafter during the remainder of said period its pro rata thereof, as aforesaid. The first of said payments is to be made on the fifteenth day of September, 1895, and those coming

afterwards on the fifteenth day of each successive month during a period of ten (10) years aforesaid, and in addition thereto is to pay any and all state, county, and municipal taxes at their maturity which may be assessed against said property during the life of this contract, saving and excepting those for the year 1895, which are to be paid by the said first party, and also saving and excepting that, if the said first party shall use said track in connection with its extension across the Tennessee river as aforesaid, then the said second party is to pay its pro rata thereof on the basis aforesaid.

It is further mutually understood and agreed that the said second party, in consideration of these premises, agrees, binds, and obligates itself to protect, hold harmless, and indemnify the said first party and its assigns against any and all claims, suits, and demands for damages for which a recovery may be had against them, or either of them, growing out of the existence of or the operation or use of said railroad track by the said second party. It is further mutually understood and agreed that the said second party is not to sub-let in whole or in part said railroad right of way or track without the written consent of the said first party, or its assigns, to be first had and obtained; and that in case of a breach of any or either of the terms, provisions, or conditions of this contract, and such breach should continue for a period of more than thirty (30) days, then and in that event this contract shall, at the option of the said first party, or its assigns, the exercise of which shall be indicated by a written notice to that effect ten (10) days previous thereto, be terminated, and the said first party, or its assigns, shall have the right not only to enter and take possession of said property, and each and every parcel thereof, without let or hindrance, but to recover such damages as it may sustain by reason of any breach hereof.

Sub-letting  
prohibited.

It is further agreed that this lease may be terminated at any time by the mutual consent of both parties.

In witness whereof the said parties have caused their corporate names and seals to be hereto attached by their properly authorized officers in duplicate.

This the twenty-ninth day of July, A.D. 1895. Executed in duplicate.

CHATTANOOGA TERMINAL RAILWAY COMPANY,

By T. J. NICHOLL, *President*;

By JOHN ORR, *Secretary and Treasurer*.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

By J. W. THOMAS, *President*;

By J. H. AMBROSE, *Secretary*.

Lease, where registered.—The above lease was properly acknowledged and registered August 2, 1895, in Hamilton county, in book "Y," vol. 5, p. 450 *et seq.*



## CHAPTER XXXVIII.

## THE TENNESSEE MIDLAND RAILWAY.

[MEMPHIS BRANCH.]

[Chartered under general Acts Tennessee, 1875, Ch. 142.]

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—The Tennessee Midland Railway Company, in order to raise funds to construct its road, issued and disposed of its *first* mortgage bonds to the amount of \$1,491,000, and of its *second* mortgage bonds to the amount of \$1,220,000, which bonds were guaranteed by the Paducah, Tennessee & Alabama Railroad. Default being made in the payment of the coupons, the St. Louis Trust Company, as trustee, on October 28, 1893, filed a bill in the circuit court of the United States for the western division of the western judicial district of Tennessee at Memphis, and afterwards, on July 1, 1895, a supplemental bill, seeking to foreclose said mortgages. Such proceedings were had that, on July 9, 1895, a decree of foreclosure of said first and second mortgages was rendered, and the property ordered to be sold by J. H. Watson and J. B. Clough, as special masters. On October 17, 1895, at 12 o'clock, at the courthouse door in Memphis, Tenn., the railroad properties, franchises, etc., were sold in conformity with the terms of the decree, and J. W. Phillips became the purchaser at the sum of \$1,000,000, which was the highest, last, and best bid. Subsequently the special masters executed to him a deed to said property, which deed was registered in Shelby county, Tenn., August 10, 1896, in record book 250, p. 206; in Henderson county, Tenn., December 23, 1895, in record book 14, pp. 225–230; in Hardeman county, Tenn., December 23, 1895, in book “J J” of deeds, p. 473; in Decatur county, Tenn., December 24, 1895, in book 13, pp. 107–111; in Madison county, Tenn., December 23, 1895, in deed book 54, p. 16; in

Fayette county, Tenn., December 31, 1895, in record book 20, pp. 485-490.

The receivers of the company, William L. Huse and John Overton, Jr., also executed a deed conveying to J. W. Phillips all their right, title, and interest in and to said road, property, franchises, etc. This deed was registered in Shelby county, Tenn., August 11, 1896, in book 250, p. 215; in Decatur county, December 24, 1895, book 13, p. 117; in Hardeman county, December 31, 1895, book "J J" of deeds, p. 481; in Fayette county, December 31, 1895, book 20, p. 495; in Madison county, December 26, 1895, book 54, p. 26; in Henderson county, December 23, 1895, book 14, pp. 337-341.

The company itself also executed a deed conveying to J. W. Phillips all its right, title, and interest in and to said railroad, property, franchises, etc. This deed was registered in Shelby county, August 10, 1896, in book 250, p. 211; in Henderson county, December 23, 1895, in book 14, p. 333; in Hardeman county, December 28, 1895, in book "J J" of deeds, p. 477; in Madison county, December 24, 1895, in book 54, p. 22; in Decatur county, December 24, 1895, in book 13, pp. 113-117; in Fayette county, December 31, 1895, in book 20, pp. 491-494.

On December 14, 1895, J. W. Phillips sold said road, properties, franchises, etc., to the Louisville & Nashville Railroad Company, and executed a deed therefor. Said deed, together with the books and pages where it is registered in the various counties, may be found herein. See next chapter.

On December 14, 1895, the Louisville & Nashville Railroad Company executed a temporary lease of this road, together with the Paducah, Tennessee & Alabama Railroad, to the Nashville, Chattanooga & St. Louis Railway. This lease is fully set out in the next chapter, showing the places of registration.

For deed of Louisville & Nashville Railroad Company to the Paducah, Tennessee & Alabama Railroad, see chapter 41 herein.

On September 9, 1896, a permanent lease of the two roads was drawn up and signed by the Louisville & Nashville Rail-

road Company and the Nashville, Chattanooga & St. Louis Railway, respectively, for a period of ninety-nine years from date, at a rental of \$154,650 per annum, payable semiannually. This was five per cent. on the amount paid by the Louisville & Nashville Railroad Company (\$3,093,000) for the two roads. The lease further provided that, should the Louisville & Nashville Railroad Company be called upon to expend additional sums for improvements, etc., on the two roads, an additional rental should be paid of five per cent. on the amount or amounts so expended. This lease is also fully set out in the next chapter.

**Legality of lease; Rogers' suit.**—There can be no question but that under the laws of the State of Tennessee both the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway had the power to execute this lease under the Acts of Tennessee, 1877, ch. 12, § 2; Acts, 1869-70, ch. 49, p. 327, § 4; Acts, 1871, ch. 69; Acts, 1881, ch. 9, p. 10, § 2; Acts, 1891, ch. 61, p. 146, and ch. 125 of same Act, p. 274; Acts, 1877, ch. 20; Code Tenn. (Shannon), § 1514.

The Louisville & Nashville Railroad Company had the power originally to purchase the road from Phillips, under Acts Tennessee, 1877, ch. 20. The only remaining question is whether or not, in attempting to exercise the power to lease, the respective companies followed the statute. This question was raised by J. S. Rogers, one of the stockholders of the Nashville, Chattanooga & St. Louis Railway, who filed a bill January 30, 1897, in the circuit court of the United States for the middle district of Tennessee (in equity), at Nashville, seeking to have the lease canceled: *First*, because the contract was fraudulently imposed upon the Nashville, Chattanooga & St. Louis Railway by the Louisville & Nashville Railroad Company, through its controlling influence as a majority stockholder; *second*, because the contract was *ultra vires*; and, *third*, because, if neither void as *ultra vires* nor voidable for fraud, it was such a contract as could not be legally consummated without ratification by a three-fourths vote of the shareholders. A demurrer was filed to this bill by the railroad companies, and sustained by the circuit judge. An appeal was taken to the United States circuit court of appeals, and a decision rendered by that court November 9, 1898. Judge Lurton, in rendering the opinion of the court, held in substance:

(1) That the Louisville & Nashville Railroad Company had a sound legal title to the road, franchises, etc., of the Tennessee Midland Railway and to the Paducah, Tennessee & Alabama Railroad, which would support the lease unless subject to other objections.

(2) That the Nashville, Chattanooga & St. Louis Railway had the power, under the laws of Tennessee, to accept such a lease.



(3) That the leased lines were in no manner parallel or competing lines with the Nashville, Chattanooga & St. Louis Railway.

(4) That the Louisville & Nashville Railroad Company had the power to dispose of the roads by lease or otherwise in the same manner and to the same extent that the old corporations might have done—that is, that the Paducah, Tennessee & Alabama Railroad Company and the Tennessee Midland Railway Company could have done.

(5) That the Louisville & Nashville Railroad Company had the power to acquire, hold, and vote the shares of the capital stock of the Nashville, Chattanooga & St. Louis Railway.

(6) That it could vote it for directors, and even on all questions in which it was interested.

(7) That the amendment of the charter of the Nashville, Chattanooga & St. Louis Railway passed in 1875, giving each of the stockholders the right to one vote for each share of stock held, was legal.

(8) That the fact that the directors were elected by the holder of the majority of the stock did not make them agents of that interest, nor raise any legal presumption that they are or would be unfaithful to the true and general interests of the corporation.

(9) That a stockholder is not a trustee, and holds and acts for himself alone, and, hence, can contract with the company, but cannot use this power of control to obtain advantage for himself at the expense of the minority stockholders.

(10) That Rogers had the right to prosecute the suit in his own name without calling upon the board of directors to prosecute it.

(11) That the lease could not be made without the consent of a majority of three-fourths in amount of the stockholders of the Nashville, Chattanooga & St. Louis Railway present and voting.

The case was reversed and remanded for a new trial, and is still pending. The opinion of Judge Lurton has not, at this writing, been published in any of the reports.

**Distance road built when leased.**—The Tennessee Midland Railway Company was chartered to extend from Memphis to a point on the Virginia state line, at or near its crossing of Clinch river in Hancock county. At the time of the lease, however, the road had only been constructed from Memphis to Perryville, on the Tennessee river. It has not since been extended.

(1) The Paducah, Tennessee & Alabama Railroad connects with the Tennessee Midland Railroad at Lexington, Tenn., and runs northwardly to Paducah, Ky. For charter, etc., of the former road, see chapter 40 herein.

(2) A charter was also taken out on December 18, 1886, for a company called the "Tennessee Midland Railway Company," to run from Nashville to Knoxville, via Lebanon. It may be found recorded in the secretary of state's office, in book "F," p. 157.

**Width of right of way.**—The Tennessee Midland Railway Company was chartered under the general Acts of Tennessee, 1875, ch. 142, sec. 6. In these charters there are no clauses granting specified numbers of feet as a right of way, in the absence of any *contract* with the original landowner, as was done in the charter of the Nashville, Chattanooga & St. Louis Railway. Section 9 of the charter, however, provided that the said company shall have the right to appropriate, as an easement, a right of way not exceeding two hundred feet—one hundred on each side of the center line of said road—over the land of any person through which the line of track may be located. Under this section, the Tennessee Midland Railway Company could have originally condemned any number of feet up to and including two hundred feet for a right of way. Whatever number of feet was originally condemned, however, would now be binding upon the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad Company, unless an additional or successive appropriation be made.\* Should no purchase or condemnation have been had at all, then the entry and construction of the road would be regarded as an *appropriation* of so much of the land as the law authorized, which is two hundred feet in Tennessee, and the Louisville & Nashville Railroad Company and its lessee, the Nashville, Chattanooga & St. Louis Railway, as the lawful purchaser and lessee, respectively, of said railroad, would be entitled to that number. 3 Lea (Tenn.), 478. If a purchase or gift from the landowner was made, then, of course, the deed would control, if mention is made of the width therein. If no *width* is specified, then the law presumes the statutory width of two hundred feet was intended. 98 Ala., 647. See, also, 3 Lea (Tenn.), 478.

\*(1) For full discussion of right to make *successive* appropriations, etc., see "Eminent Domain," "Right of Way," herein. Refer to *index*.

## ORIGINAL CHARTER OF THE TENNESSEE MIDLAND RAILWAY COMPANY.

[Chartered under general Acts Tennessee, 1875, ch. 142, § 6.]

**SECTION 1. Incorporation, name, route, general powers.**—*Be it known*, That A. S. Buford, J. B. Pace, E. D. Christian,

Charles Watkins, Thomas C. Williams, T. C. Leake, Jr., R. H. Temple, James T. Gray, J. J. Montague, A. L. Crawford, W. D. Bethel, Napoleon Hill, John Overton, Jr., J. M. Hamilton, and Nathaniel Baxter, Jr., are hereby constituted a body politic and corporate by the name and style of "Tennessee Midland Railway Company," for the purpose of conducting and operating a railway from Memphis, in the county of Shelby, to a point on the Virginia state line at or near its crossing of Clinch river, in the county of Hancock, with two branch roads from convenient points on the main line, the one to Columbia, in the county of Maury, and the other to Knoxville, in the county of Knox.

(1) **Charter amended, may change termini.**—By Acts Tennessee, 1887, ch. 39. §§ 1, 2, all railroad companies chartered under the general laws of this state may, by resolution of board of directors, change either terminus before the final location of the road. See act itself for method.

(2) **Arbitration.**—By-laws for arbitration sustained. 7 Pickle (Tenn.), 64.

(3) **Branches.**—By Acts Tennessee, 1889, ch. 158, all railroad companies chartered under the general laws are allowed to build branch roads in certain cases. See act itself.

**SEC. 2. General powers.**—The general powers of said corporation are, to sue and be sued by the corporate name, to have and use a common seal, which it may alter at pleasure; if no common seal, then the signature of the name of the corporation by any duly authorized officer shall be legal and binding; to purchase and hold or receive by gift, in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment, or part payment, of any debt due to the corporation, and sell realty for corporation purposes; to establish by-laws and make all rules and regulations not inconsistent with the laws and the constitution deemed expedient for the management of corporate affairs; to appoint such subordinate officers and agents, in addition to the president and secretary or treasurer, as the business of the corporation may require; to designate the name of the office and fix the compensation of the officer.



**SEC. 3. Special provisions.**—The following provisions and restrictions are coupled with said grant of powers: A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors. The term of all officers may be fixed by the by-laws of the corporation; the same not, however, to exceed two years. The corporation may, by by-laws, make regulations concerning the subscription for or transfer of stock; fix upon the amount of capital to be invested in the enterprise; the division of the same into shares; the time required for payment thereof by the subscribers for stock; the amount to be called for at any one time; and in case of failure of any stockholder to pay the amount thus subscribed by him at the time and in the amounts thus called, a right of action shall exist in the corporation to sue said defaulting stockholder for the same.

See 3 Hum., 531; 12 Lea, 252; 4 Cold., 101.

[**SEC. 4. Directors, quorum; of books.**—The board of directors, which may consist of five or more members, at the option of the corporation, to be elected either in person or by proxy, by a majority of the votes cast, each share representing one vote, shall keep a full and true record of all their proceedings, and an annual statement of receipts and disbursements shall be copied on the minutes, subject at all times to the inspection of any stockholder. The books of the corporation shall show the original or subsequent stockholders, their respective interests, the amount which has been paid on the shares subscribed, the transfer of stock, by and to whom made; also other transactions in which it is presumed a stockholder or creditor may have an interest.

**SEC. 5. Unpaid stock.**—The amount of any unpaid stock due from a subscriber to the corporation shall be a fund for the payment of any debts due from the corporation, nor shall the transfer of stock by any subscriber relieve him from payment, unless his transferee has paid up all or any of the balance due on said original subscription.

See 10 Pick. (Tenn.), 154, 608.

**SEC. 6. Express and implied powers.**—By no implication or construction shall the corporation be deemed to possess any powers except those hereby expressly given or necessarily implied from the nature of the business for which the charter is granted, and by no inference whatever shall said corporation possess the power to discount notes or bills, deal in gold or silver coin, issue any evidence of debts as currency, buy and sell any agricultural products, deal in merchandise, or engage in any business outside the purpose of the charter.

**SEC. 7. Charter may be repealed or amended.**—The right is reserved to repeal, annul, or modify this charter. If it is repealed, or if the amendments proposed, being not merely auxiliary but fundamental, are rejected by a vote representing more than half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications, being fundamental, are accepted by the corporation as aforesaid, in a general meeting to be called for that purpose, any minor, married woman, or other person under disability, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much; if not, then so much as may be its real value in the market on the day of the withdrawal of said stockholders as aforesaid; *Provided*, That the claims of all creditors are to be paid in preference to said withdrawing stockholders.

The charter of the Nashville, Chattanooga & St. Louis Railway cannot be amended without consent of company. See sec. 34 of the charter.

**SEC. 8. Directors, powers of.**—A majority of the board of directors shall constitute a quorum, and shall fill all vacancies until the next election. The first board of directors shall consist of the five or more incorporators who shall apply for and obtain the charter. The said corporation may have the right] to borrow money and issue notes or bonds upon the faith of the corporate property, and also to execute a mortgage or mortgages as further security for repayment of money thus borrowed.

The above part in brackets (sec. 4 to fifth line of sec. 8) is included in all charters under the Acts of 1875, ch. 142, and amendments thereto, but, for some reason, was left out of this charter, as will appear from the copy in the secretary of state's office, in book "F," p. 106. It should have been inserted, as the statutory charter cannot be altered at the will of the parties.

**SEC. 9. Right of way two hundred feet.**—The said corporation shall have the right, in pursuance of the general law authorizing the condemnation of private property for works of internal improvement, as set forth in §§ 1325 to 1348 in the code (both inclusive), to appropriate as an easement the right of way, not exceeding two hundred feet, over the land of any person through which the line of the track may be located. Said sections of the code are hereby literally copied and inserted, in the words and figures following:

**SEC. 10 (1325). Land may be taken, how.**—Any person or corporation authorized by law to construct any railroad, turnpike, canal, toll bridge, road, causeway, or other work of internal improvement to which the like privilege is conceded, may take the real estate of individuals not exceeding the amount prescribed by law, or by the charter under which the person or corporation acts, in the manner and upon the terms herein provided. (Iowa code, 1851, § 759.)

(1) **Disability of owner does not affect right.**—The right to take land under the power of eminent domain is not restricted by any disability of the owner, who is entitled to demand and receive the value of the property, but must show title. 3 Head (Tenn.), 63-65.

(2) By Acts Tennessee, 1885, ch. 135, the operation of this and succeeding sections was extended so as to apply and include the condemnation and taking of the property, privileges, rights, or easements of private corporations. See act itself for method.

(3) By Acts 1889, p. 447, as embodied in Shannon's Code, § 1879, it was made unlawful to construct or use any steam railway on any county road or highway, without the consent of the county court, to be granted in a method therein set out.

**SEC. 11 (1326). Proceedings, etc.**—The party seeking to appropriate such lands shall file a petition in the circuit court of the county in which the land lies, setting forth in substance: (1) The parcel of land a portion of which is wanted, and the extent wanted; (2) the name of the owner of such land, or, if



unknown, stating the fact; (3) the object for which the land is wanted; (4) a prayer that a suitable portion of land may be decreed to the petitioner and set apart by metes and bounds. (Iowa code, 1851, § 760.)

Petition need not be sworn to.

SEC. 12 (1327). **Notice to owner.**—Notice of this petition shall be given to the owner of the land, or, if a nonresident of the county, to his agent, at least five days before its presentation. (*Ib.*, modified.)

SEC. 13 (1328). **Where owner nonresident.**—If the owner is a nonresident of the state, or unknown, notice shall be given by publication as provided in this code in similar cases in chancery.

SEC. 14 (1329). **Proceedings only bind parties.**—All parties having any interest in any way in such land may be made defendants, and the proceedings will only cover and affect the interest of those who are actually made parties, unborn remaindermen being, however, bound by proceedings to which all living persons in interest are parties.

Tenants for life, years, and reversioners are interested parties, and must be compensated. 2 Head, 65, 176.

SEC. 15 (1330). **Writ of inquiry of damages.**—After the requisite notice has been given, if no sufficient cause to the contrary is shown, the court shall issue a writ of inquiry of damages to the sheriff, commanding him to summon a jury to inquire and assess the damages. (Iowa Code, 1851, § 763.)

SEC. 16 (1331). **Clerk to issue writ, sheriff to summon jury.**—By consent of parties, or on application of the plaintiff, unless objection is made by the defendant, the writ of inquiry may be issued by the clerk as of course, after service of notice, on which the sheriff will summon the jury.

SEC. 17 (1332). **Jury to be disinterested.**—The jurors shall not be interested in the same or a similar question, and shall possess the qualifications of other jurors, and may be nominated by the court, selected by consent of the parties, or summoned by the sheriff.

SEC. 18 (1333). **Failure to attend.**—If named by the court,

and the persons named are unable to attend when summoned, the place of such persons shall be supplied by the sheriff.

**SEC. 19 (1334). Number of jurors; challenges.**—The jury will consist of five persons, unless the parties agree upon a different number, and either party may challenge for cause, or peremptorily, as in other civil cases.

See 11 Heis., 56; 12 Heis., 56, 57.

**SEC. 20 (1335). Notice of taking inquest.**—The sheriff shall give the parties or their agents, if residents of the county, three days' notice of the time and place of taking the inquest, unless the time has been fixed by the order of the court. (Iowa Code, 1851, § 771.)

**SEC. 21 (1336). Jury to be sworn by sheriff.**—The jury, before proceeding to act, shall be sworn by the sheriff, fairly and impartially, without favor or affection, to lay off, by metes and bounds, the land required for the proposed improvement, and to inquire and assess the damages.

**SEC. 22 (1337). To examine ground and assess damages.**—The jury will then proceed to examine the ground, and may hear testimony, but no argument of counsel, and set apart, by metes and bounds, a sufficient quantity of land for the purposes intended, and assess the damages occasioned to the owner thereby. (Iowa Code, 1851, § 768.)

See 3 Lea, 482.

**SEC. 23 (1338). Damages, how estimated.**—In estimating the damages the jury shall give the value of the land without deduction, but incidental benefits which may result to the owner by reason of the proposed improvement may be taken into consideration in estimating the incidental damages.

For full discussion of this, see "*Eminent Domain*" herein. Refer to index.

**SEC. 24 (1339). Report returned in writing.**—The report of the jury shall be reduced to writing, signed by a majority of the jurors, delivered to the sheriff, and by him returned into court.

**SEC. 25 (1340). Confirmation of report.**—If no objection is made to the report, it is confirmed by the court, and the land

decreed to the petitioner, upon payment to the defendants, or to the clerk for their use, of the damages assessed, with costs. (*Ib.*, § 775, modified.)

SEC. 26 (1341). **Exception to report and new writ.**—Either party may object to the report of the jury, and the same may, on good cause shown, be set aside, and new writ of inquiry awarded. (Act 1849-50, ch. 72, sec. 5.)

SEC. 27 (1342). **Appeal; new trial.**—Either party may also appeal from the finding of the jury, and, on giving security for the costs, have a trial anew before a jury in the usual way. (*Ib.*, modified.)

See 12 Heis. (Tenn.), 57.

SEC. 28 (1343). **Costs against appellant, when not.**—If the verdict of the jury upon the trial affirms the finding of the jury of inquest, or is more unfavorable to the appellant than the finding of such jury, the costs shall be adjudged against such appellant, otherwise the court may award costs as in chancery cases. (*Ib.*)

SEC. 29 (1344). **Appeal does not suspend work, how.**—The taking an appeal does not suspend the operations of the petitioner on the land, provided such petitioner will give bond, with good security, to be approved by the clerk, in double the amount of the assessment of the jury of inquest, payable to the defendant, and conditioned to abide by and perform the final judgment in the premises.

SEC. 30 (1345). **Preliminary surveys; damages.**—A person or company actually intending to make application for the privileges herein contemplated, and entering upon the land of another for the purpose of making the requisite examinations and surveys, and doing no unnecessary injury, is liable only for the actual damage done; and sued in such case, the plaintiff shall recover only as much costs as damages. (Iowa Code, 1851, § 778.)

SEC. 31 (1346). **Damages to be prepaid, or bond on appeal.**—No person or company shall, however, enter upon such land for the purpose of actually occupying the right of way until the damages assessed by the jury of inquest and the cost have been



actually paid; or, if an appeal has been taken, until the bond has been given to abide by the final judgment, as before provided.

See 6 Cold., 162; 7 Heis., 518, 535; 13 Lea, 671.

**SEC. 32 (1347). Owner may have inquest or sue for damages, when; proceedings.**—If, however, such person or company has actually taken possession of such land, occupying it for the purpose of internal improvement, the owner of such land may petition for a jury of inquest, in which case the same proceedings may be had, as near as may be, as hereinbefore provided; or, he may sue for damages in the ordinary way, in which case the jury shall lay off the land by metes and bounds, and assess the damages as upon the trial of an appeal from the return of a jury of inquest.

See 2 Head, 174, 65; 3 Lea, 480; 13 Lea, 670.

**SEC. 33 (1348). Limitation of proceedings by owner.**—The owners of land shall, in such cases, commence proceedings within twelve months after the land has been actually taken possession of, and the work of proposed internal improvement begun, saving, however, to unknown owners and nonresidents twelve months after actual knowledge of such occupation, not exceeding three years, and saving to persons under disabilities of infancy, coverture, and unsoundness of mind twelve months after such disability is removed, but not exceeding ten years.

See 12 Heis., 623. See, also, "Eminent Domain." herein; refer to index.

**[SEC. 34. Gauge; transportation charges; construction of tracks on highways.**—The corporation is authorized to adopt such gauge as they may prefer. The charge for transportation shall not exceed twenty-five cents per hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement, for every hundred miles transported, and four cents per mile for every passenger, with power to make special contracts with shippers on their roads in regard to rate of freight, so as not to exceed the amounts herein designated. The line of track of the road shall be so constructed so as not to interfere with convenient travel of the public along the highways, coun-

try roads, streets and alleys of cities, towns, and villages, and so as to allow carts, wagons, carriages, and other vehicles conveniently and safely to pass over or under the line of the track, and so as not to intercept traveling on foot or horseback, or in vehicles of any kind, from the necessary and proper use of the public roads, streets, or alleys, in the usual and proper mode for their convenience.

By Acts Tenn., 1885, ch. 20, all railroad companies in the state were authorized to select and alter the gauge of their road at pleasure.

**SEC. 35. Crossings; signboards.**—Boards well supported by posts, or otherwise, shall be placed and constantly kept across each public road, when the same is crossed on the same level by the track of the railway, the boards to be elevated so as not to obstruct travel, and on each side of said boards there shall be printed in large letters, easily to be seen by the traveler, the words “Railroad Crossing—Look out for the Cars.” Said boards need not be put up at the crossing of streets and alleys in cities, towns, and villages, but such railroad company shall be subject to such proper regulations made by municipal authorities in pursuance of general municipal powers, regulating speed, passage, and flagman in such municipalities and at crossings; and when there are sidings and switches, the whistle shall always be blown at a distance of not less than two hundred and fifty yards from every crossing of a public road. When land on both sides of the track is owned by the same proprietor, convenient crossings shall be made and kept up at the expense of the corporation, for the use of said proprietor, and all necessary cow-gaps made.

**SEC. 36. Regulations for running trains; fare must be paid.**—The board of directors shall fix the regular times for the running of trains for the transportation of passengers and property, and shall furnish sufficient accommodations for the safe, comfortable, and convenient transportation, and shall take, transport, and discharge such passengers and property at, from, and to such places on the due payment of freights, tolls, and fare legally authorized to be charged therefor, and, in case of the refusal of said corporation, their officers or agents, to

take and transport any passenger, or to deliver the same, or either of them, at the regular and appointed time, such corporation shall pay to the party aggrieved all damages thereby suffered, with costs of suit. If any passenger refuse to pay his toll or fare, the conductor may put him off the cars at any station or convenient point where said passenger can step on land.

**SEC. 37. Prohibited contracts; must receive freight from other roads.**—The corporation shall make no contract giving any person a preference in the speedy shipment of freights. This corporation shall receive on their road full freighted cars from other roads, and transport them, without breaking bulk, to the place of destination, charging for the goods, wares, and merchandise therein no greater rate of freight than is charged for similar goods, wares, and merchandise in their own cars, and return said cars free of charge; *Provided*, The cars thus to be received are good and substantial; *And also provided*, The distance said wares and merchandise are to be transported is not less than twenty miles.

**SEC. 38. Officers and directors, capital stock, shares, books.**—The said five or more corporators shall, within a convenient time after the registration of this charter in the office of the secretary of state, select from their number a president, secretary and treasurer, or the last two offices may be combined into one, and shall not necessarily be stockholders, said president and the other corporators to constitute the first board of directors. The board of directors may fix the amount of capital stock of the company and the number of shares into which the same may be divided, and under their direction subscription books may be opened to obtain stock, all other persons having an equal right with said original corporators to subscribe for stock until the full amount of said capital stock is subscribed. When a sufficient amount of stock is subscribed, notice, personal or by advertisement in a newspaper where the principal office of the corporation is to be kept, is to be given of the time and place of an election of officers. The result of all elections is to be determined by a majority of the votes cast, each share to represent one vote.



**SEC. 39. Directors may increase capital.**—The board of directors may at any time increase the capital stock if the necessities of the corporation, in their estimation, require said increase.

**SEC. 40. May enter upon private lands.**—The company, by its officers or agents, may enter upon the lands of private persons for the purpose of making surveys, estimates, and location of route.

**SEC. 41. Shares of stock personalty.**—The stock is to be impressed with the character of personal property.]

The above part in brackets (secs. 34 to 41) is included in all charters under the Acts of 1875, ch. 142, and amendments thereto, but for some reason was left out of this charter, as will appear from the copy in the secretary of state's office of Tennessee, in book "F," p. 106. It should have been inserted, as the statutory charter cannot be altered at the will of the parties.

We, the undersigned citizens, not under the age of twenty-one years, apply to the State of Tennessee, by virtue of the law of the land, for a charter of incorporation for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, this twenty-eighth day of December, 1886.

JAMES T. GRAY,  
W. D. BETHEL,  
J. M. HAMILTON,  
A. S. BUFORD,  
CHARLES WATKINS,  
T. C. LEAKE, JR.,  
J. J. MONTAGUE,  
NAPOLEON HILL,  
NATHANIEL BAXTER, JR.,  
J. B. PACE,  
E. D. CHRISTIAN,  
THOS. C. WILLIAMS,  
R. H. TEMPLE,  
A. L. CRAWFORD,  
JOHN OVERTON, JR.

Witness as to all the signatures:

RO. L. TRAYLOR.

STATE OF TENNESSEE, )  
*Davidson County.* )

Personally appeared before me, W. T. Smith, clerk of the county court of said county, Robert L. Traylor, a subscribing witness to the attached application for a charter under the laws of Tennessee, who, being first duly sworn, deposes and says that he is personally acquainted with the within named, A. S. Buford, J. B. Pace, T. C. Leake, Jr., R. H. Temple, E. D. Christian, Thos. C. Williams, Chas. Watkins, James T. Gray, J. J. Montague, A. S. Crawford, W. D. Bethel, Napoleon Hill, John Overton, Jr., J. M. Hamilton, and Nathaniel Baxter, Jr., the incorporators, and that they acknowledged the same, in his presence, to be their act and deed for the purposes therein contained; and the said Robert L. Traylor further deposes and says that said application was signed in his presence, and that the signatures thereto attached are the signatures of said incorporators. Witness my hand, at office, this the twenty-eighth day of December, 1886.

W. T. SMITH, *Clerk.*

The above charter was registered in Davidson county. Tenn., in book 88, p. 433, on December 28, 1886, and in the secretary of state's office December 29, 1886, in book "F," p. 106.

## CHAPTER XXXIX.

TEMPORARY AND PERMANENT LEASES OF TENNESSEE MID-  
LAND RAILROAD AND THE PADUCAH, TENNESSEE  
& ALABAMA RAILROAD.—DEED TO L. & N.  
OF TENNESSEE MIDLAND RY.

L. & N. R. R. Co., }  
                  TO        } *Temporary lease of both roads.*  
N., C. & St. L. Ry. }

WHEREAS, On Friday, the eleventh day of October, 1895, at a sale held at Paducah, Kentucky, by the special masters of the circuit court of the United States for the district of Kentucky, at Paducah, and for the eastern division of the western district of Tennessee, at Jackson, pursuant to the final decree of foreclosure and sale made by the said circuit court for the district of Kentucky, at Paducah, and by the said circuit court for the eastern division of the western district of Tennessee, at Jackson, in the suit pending in each of said courts of the *St. Louis Trust Co., complainant, v. Paducah, Tennessee & Alabama Railroad Co., defendant, J. W. Phillips, of the city of St. Louis, and State of Missouri*, became the purchaser of the property described in said final decree of foreclosure and sale, to wit: The railroad of the Paducah, Tennessee & Alabama Railroad Company as therein described, and each and all the other property, rights, franchises, and things of every kind and nature described in, and directed to be sold by, said decree. For a more particular description of all of which, reference is made to said final decree of foreclosure and sale in said suits; and,

WHEREAS, On Thursday, the tenth day of October, 1895, at a sale held at Memphis, Tennessee, by the special masters of the circuit court of the United States for the western division of the western district of Tennessee, at Memphis, pursuant to



the final decree of foreclosure and sale made by the said circuit court for the western division of the western district of Tennessee, at Memphis, in the suit pending Preamble. therein of the *St. Louis Trust Co., complainant, v. Tennessee Midland Railway Co., defendant*, said J. W. Phillips, of the city of St. Louis, State of Missouri, became the purchaser of the property described in said final decree of foreclosure and sale, to wit: The railroad of the Tennessee Midland Railway Company as therein described, and each and all the other property, rights, franchises, and things of every kind and nature described in, and directed to be sold by, said decree. For a more particular description of all which, reference is made to said final decree of foreclosure and sale in said suit; and,

WHEREAS, Said J. W. Phillips has sold all of the above described property to the Louisville & Nashville Railroad Company for the sum of three million one hundred and sixteen thousand (\$3,116,000) dollars, on which the sum of one hundred thousand dollars has been paid in cash, in consequence of which payment said Louisville & Nashville Railroad Company has this day been let into possession of all the above described properties, and the remainder of the amount, viz., three million and sixteen thousand dollars, with interest, is to be paid on or before the expiration of six calendar months from this date, and, pending such payment in full, the instruments of transfer or conveyance of title of all of said properties are to be deposited in escrow with the Mechanics' National Bank, of the city of New York, to be by it delivered to the said Louisville & Nashville Railroad Company, or its assigns, on the payment to said Mechanics' National Bank of said balance and interest; and,

WHEREAS, It is the intention of the parties hereto that all of said properties hereinabove described and referred to shall be leased, granted, and demised to the Nashville, Chattanooga & St. Louis Railway for the full term of ninety-nine years from this date, and the formal and permanent indenture of lease, containing all the various terms, conditions, and covenants upon which the same is made, is to be executed by said Louisville & Nashville Railroad Company to the said Nashville, Chattanooga & St. Louis Railway so soon as the Louisville & Nash-

ville Railroad Company's title to the demised property shall be completed by the payment to said Mechanics' National Bank of the said balance and interest, and by the unconditional delivery to the Louisville & Nashville Railroad Company of said instruments of transfer or conveyance of the title of all of said properties; and, meanwhile, it is desired that the said Nashville, Chattanooga & St. Louis Railway shall have possession of and operate all the properties hereinabove described and referred to.

Know all men by these presents, That the Louisville & Nashville Railroad Company does hereby grant, demise, and lease to the Nashville, Chattanooga & St. Louis Railway all of the properties hereinabove described and referred to, from this date until the said formal and permanent lease hereinabove referred to shall be executed.

To have and to hold the same unto the said Nashville, Chattanooga & St. Louis Railway, its successors and assigns, and said Nashville, Chattanooga & St. Louis Railway for itself, its successors and assigns, hereby agrees to take, have, and hold the same upon the following terms, conditions, and covenants, viz.:

1. The Nashville, Chattanooga & St. Louis Railway shall pay, semiannually, during the continuance of this lease, as rent of said properties above granted, demised, and leased, at the rate of one hundred and fifty-five thousand eight hundred dollars per annum, being five per cent. on three million one hundred and sixteen thousand dollars, said purchase price.

2. Said Nashville, Chattanooga & St. Louis Railway shall, during the continuance of this lease, keep, preserve, and maintain the properties hereby demised in good working condition and repair as a first-class railroad, and will fully perform towards the public all obligations due to it from the Louisville & Nashville Railroad Company in respect to the properties hereby demised.

3. Said Nashville, Chattanooga & St. Louis Railway shall, during the continuance of this lease, pay all taxes and assessments of whatever nature or kind that may be levied or assessed against the properties demised, or

**Conveyance  
clause.**

**Rent, and  
how paid.**

**Lessee to keep  
road in good  
repair.**

**Lessee to pay  
taxes, etc.**

any part thereof, and will preserve the said properties, and each and every part thereof, free from any lien or charge whatsoever, by reason of any taxes or assessments of any kind or nature whatsoever; and said Nashville, Chattanooga & St. Louis Railway further agrees to discharge all obligations of every kind arising, which become, or might become, by judgment of court or otherwise, liens upon the demised properties or any part thereof.

4. So soon as the instruments or conveyances for the properties hereinabove described and referred to, from J. W. Phillips to the Louisville & Nashville Railroad Company, shall be delivered unconditionally to the said Louisville & Nashville Railroad Company by said Mechanics' National Bank, as aforesaid, and the said Louisville & Nashville Railroad Company shall execute and deliver to said Nashville, Chattanooga & St. Louis Railway a formal lease for the full term of ninety-nine years from this date for the properties herein-  
Formal lease provided for.  
 above described and referred to, this lease shall terminate and be of no further effect.

It is understood between the parties hereto that it is the purpose of the Louisville & Nashville Railroad Company to execute a mortgage upon all the properties hereinabove described and referred to, for the purpose of securing the payment of bonds to be issued at the rate of \$20,000 per mile for each mile of the railroads hereinabove described and referred to, making the total issue of bonds upon the mileage now existing five million one hundred and twenty thousand dollars; and that this lease and the formal and permanent lease to be hereafter executed between the parties, as hereinabove provided, are each and both to be subject to the lien of the said mortgage, which said mortgage is to be executed when the title of the Louisville & Nashville Railroad  
Lease to be subject to mortgage of L. & N. R. R.  
 Company shall be made complete by the unconditional delivery to it of the instruments of transfer or conveyance by the Mechanics' National Bank as aforesaid. Of the said bonds, three million one hundred and sixteen thousand dollars are to be issued on account of the purchase price of said properties, as



aforesaid, and other of said bonds may be issued, from time to time, as agreed on by the parties hereto; or, in the event of disagreement, as determined by arbitration, on account of permanent improvements and betterments of the demised properties, the total on this account not to exceed one million two hundred and thirty-six thousand dollars in amount, and on account of purchase of additional equipment for the demised properties, the total on this account not to exceed seven hundred and sixty eight thousand (\$768,000) dollars, and the said Nashville, Chattanooga & St. Louis Railway is to pay, under the permanent lease, as rent and additional rent, semiannually, at the rate of not more than five per cent. per annum on the amount of bonds issued to fund the first cost of the property, and to be issued from time to time for permanent improvements and betterments, and for additional equipment. The terms of these last mentioned provisions, as well as all other matters pertaining to the lease, shall be set out in detail in the final and permanent lease to be hereafter executed, as hereinabove stated.

An inventory containing a further description of the properties demised is attached hereto and made a part hereof.

In testimony whereof, the parties hereto have hereunto subscribed their names by their respective presidents, and affixed their respective corporate seals, attested by their respective secretaries, this the fourteenth day of December, 1895.

Executed in duplicate.

LOUISVILLE & NASHVILLE RAILROAD CO.,

[SEAL.]

By M. H. SMITH, *President*.

Attest: J. H. ELLIS, *Secretary*.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

[SEAL.]

By J. W. THOMAS, *President*.

Attest: J. H. AMBROSE, *Secretary*.

**Lease, where registered.**—The foregoing lease was properly acknowledged by both companies, and registered in the office of the county court of McCracken county, Ky., on April 18, 1896; in office of county court of Marshall county, Ky., April 22, 1896; in office of county court of Callo-way county, Ky., April 27, 1896; in office of county court of Graves county, Ky., May 4, 1896; and in office of secretary of state of Kentucky, May 16, 1896.

## PERMANENT OR FORMAL LEASE FOR NINETY-NINE YEARS.

L. & N. R. R. Co.,  
                   TO  
 N., C. & St. L. Ry. } *Formal lease of both roads.*

This indenture, entered into this ninth day of September, 1896, between the Louisville & Nashville Railroad Company, first party, and the Nashville, Chattanooga & St. Louis Railway, second party, witnesses:

That the first party, in consideration of the punctual payment of the rents and the faithful performance of the conditions and covenants hereinafter reserved and contained, does hereby grant, demise, and lease to the second party all and singular the railroads now constituting the Paducah & Memphis Division of the Louisville & Nashville Railroad, which are more particularly described as follows:

The railroad formerly of the Paducah, Tennessee & Alabama Railroad Company, extending from within the city of Paducah, in the State of Kentucky, and running P., T. & A. R. R. thence in a southerly direction through the counties of McCracken, Graves, Marshall, and Calloway, in the State of Kentucky; and thence through the counties of Henry, Carroll, and Henderson, in the State of Tennessee, to a junction with the Tennessee Midland Railway at or near the town of Lexington, in said county of Henderson, and formerly known as the Paducah, Tennessee & Alabama Railroad, being about one hundred and eighteen and six-tenths miles in length;

Also, the railroad formerly of the Tennessee Midland Railway Company, extending from within the city of Memphis, in the State of Tennessee, and running thence Tenn. Mid. Ry. in an easterly direction through the counties of Shelby, Fayette, Hardeman, Madison, Henderson, and Decatur to Perryville, on the west bank of the Tennessee river, in said county of Decatur, and formerly known as the Tennessee Midland Railway, being about one hundred and thirty-five and six-tenths miles in length;

Also, the roadbed, tracks, switches, side tracks, rails, ties,

fastenings, ways, easements, rights of way, culverts, bridges, viaducts, trestles, fences, and other structures, and depots, station houses, machine shops, coal bins, engine houses, **Other property leased.** car houses, freight houses, wood houses, warehouses, and other buildings, water tanks, turntables, docks, wharves, telegraph lines, superstructures, erections, and fixtures, and the several lots, pieces, and parcels of land on which the same are or may be located, and all other property forming part of said Paducah, Tennessee & Alabama Railroad, or of said Tennessee Midland Railway, or in any manner appurtenant to either, owned by the Louisville & Nashville Railroad Company;

Also, all the engines, locomotives, tenders, cars, rolling stock, and other equipment, machinery, tools, implements, supplies, fuel, and materials owned, held, used, or **Rolling stock leased.** acquired by the first party in constructing, operating, maintaining, repairing, or replacing said railroads hereinabove described, or either of them, or any part thereof;

Also, all the rights, franchises, privileges, and immunities of the Louisville & Nashville Railroad Company in respect of, and pertaining or relating to, said railroads hereinabove described, or either of them, or any part thereof, and all the reversions, remainders, tolls, incomes, rents, issues, and profits thereof, and all and singular all other property and rights of property of every kind and nature of the first party, wherever situated or however held, for use in connection with or for the purposes of said railroads hereinabove described, or either of them, or any part thereof;

To have and to hold the same unto the said second party, its successors and assigns, for the full term of ninety-nine years **Duration of lease.** from the fourteenth day of December, 1895, until the fourteenth day of December, 1994, and the second party, for itself, its successors and assigns, hereby agrees to take, have, and hold the same upon the following rents, conditions, and covenants, viz.:

ARTICLE 1. The second party agrees to pay as rent for all of the properties granted, demised, and leased, the sum of one



hundred and fifty-four thousand six hundred and fifty (\$154,650) dollars annually during the said term, said rent being at the rate of five per cent. per annum on \$3,093,000, the purchase price paid by the first party for the said properties, the said rent to be paid semiannually in two equal installments, on the first day of March and first day of September in each year, at the first party's office in New York City.

Rent, and  
how paid.

ART. 2. This lease is made subject to a mortgage or deed of trust from the Louisville & Nashville Railroad Company to the Manhattan Trust Company, bearing date the first day of February, 1896, and known as the "Paducah & Memphis Division fifty-year four per cent. gold first mortgage," being a mortgage upon the properties hereby demised, to secure an issue of five million dollars of bonds; and the lien of the said mortgage, and of the bonds issued under and secured thereby, shall be prior in right to any right or interest acquired by the second party under this indenture.

Lease subject  
to mortgage of  
L. & N. R. R.

ART. 3. It is provided in article third of the mortgage above described, that one million two hundred thousand dollars of the bonds to be issued under and secured thereby may be issued only in repayment of the actual amounts expended for such additional locomotives, cars, and other equipment purchased or constructed from time to time, as may, in the opinion of the board of directors of the Louisville & Nashville Railroad Company, be needed for the successful operation of said railroads, and the actual amounts expended for such additional side tracks, depots, stations, and other buildings, elevators, warehouses, shops, machinery, and tools, and other additions, betterments, improvements, and expenditures to or upon said railroads as from time to time may be authorized by said board.

Provision for  
future purchase of cars,  
etc.

It is agreed between the parties hereto that the first party, from time to time, will furnish the necessary money for the purchase or construction of such additional locomotives, cars, and other equipment as the parties hereto may agree upon as necessary for the successful operation of the properties hereby

demised, and for the construction or acquisition of such additional side tracks, depots, stations, and other buildings, elevators, warehouses, shops, machinery, and tools, and for other additions, betterments, improvements, and expenditures to or upon the properties hereby demised, as may be agreed upon by the parties hereto, and the second party will devote the money so furnished exclusively to the purposes for which it was furnished, and will supply the first party with satisfactory evidence that the same has been so used, in order that the first party may, from time to time, as money shall be so furnished to and expended by the second party, obtain therefor, by giving the necessary certificates and taking the necessary steps, bonds secured by said mortgage, as is provided in article third of said mortgage. If the parties hereto cannot agree, at any time, that money should be furnished under this article of this lease, or disagree as to the amount to be furnished, or as to the particular purposes for which it is to be or ought to be furnished, any such disagreement shall be submitted to and decided by arbitration, as follows: Each of the parties hereto shall choose an arbitrator, and the two arbitrators so chosen shall choose an umpire; and thereupon the arbitrators and umpire shall hear and consider the subject of disagreement, and shall render their award in writing, which shall be final and binding upon the parties hereto.

**Arbitration  
provided for.**

It is further agreed that the first party shall not be bound to furnish any money, under this article of this lease, for any purpose unless it will be entitled to obtain therefor bonds under article third of said mortgage, nor after the full amount of bonds authorized to be issued by said article third of said mortgage shall have been issued thereunder.

**Condition of  
future ad-  
vances.**

**ART. 4.** It is further agreed that all additional locomotives, cars, and other equipment purchased or constructed from time to time under article third of this lease, and all such additional side tracks, depots, stations, and other buildings, elevators, warehouses, shops, machinery, and tools, and other additions, betterments, improvements, and expenditures to or upon the demised properties, made from time to time under article third

of this lease, shall immediately become a part of the demised properties, and the second party shall pay, as <sup>Additional</sup> additional rent on that account, amounts equal to <sup>rent. when.</sup> five per cent. per annum on the amounts of money furnished the second party from time to time for the purchase or construction or making thereof under the third article of this lease, from the respective dates of the furnishing of such amounts until the termination of this lease. The first installment of such additional rent on account of any amount furnished under article third hereof is to be paid on the 1st day of March or on the 1st day of September, whichever may first succeed the date such amount was furnished, and thereafter such rent is to be paid in two equal semiannual installments on the 1st day of March and on the 1st day of September of each year. All such rent is to be paid at the first party's office in New York city.

ART. 5. The second party agrees to pay all taxes and assessments of every kind that may in anywise be levied or assessed upon or against or on account of the railroads, other properties, premises, equipment, franchises, and rights covered by this lease, or any of them, or any part of any or all of them, and agrees to preserve each and every part thereof <sup>Taxes, etc.,</sup> free and clear from any and all liens and charges <sup>to be paid</sup> <sup>by lessee.</sup> whatsoever by reason of any and all taxes and assessments; and the second party hereby assumes and agrees to satisfy and discharge all other duties, obligations, and liabilities of every nature and kind. and to preserve all and every part of the demised properties free and clear from any and all liens and charges of every nature which may or might at any time attach thereto or to any part thereof, by judgment of court or in any other manner whatever, except the lien of the mortgage hereinbefore referred to. And the second party agrees to indemnify the first party against and hold it harmless from any and every claim, liability, loss or damage, in any way arising from or connected with the operation, use, or enjoyment by the second party at any and all times during the term of this lease of the demised properties or any part thereof.



ART. 6. The second party agrees, at its own risk, cost, and expense, at all times during the continuance of this lease, to keep, preserve, and maintain the railroads, hereby demised, in good order, and will in like manner at all times during the continuance of this lease keep, maintain, and preserve all of the demised railroads, other properties, premises, and equipment now in existence, and all betterments, additions, and equipment that may hereafter come into existence and be subject hereto, in as good repair as the same now are, or as the same may be when they come into existence and become subject hereto. And the second party agrees at all times faithfully to perform toward the public all obligations due to it from the first party on account of or in respect to the demised properties.

ART. 7. This lease is the formal and permanent lease referred to and contemplated in the temporary lease from the first party to the second party, dated the 14th day of December, 1895; and said temporary lease, in the particulars wherein it is at variance with this lease, is incorrect and incomplete; and the said temporary lease is hereby terminated, and the second party hereby releases the first party from any and all claims it might assert, or rights it might claim, under said temporary lease of December 14, 1895, except for improvements which have been made by the party of the second part.

ART. 8. All the covenants, agreements, undertakings, and promises which the second party makes or assumes in this lease shall be binding on the successors and assigns of the second party.

In witness whereof, the parties hereto have hereunto subscribed their names and affixed their corporate seals this date first above written, in duplicate originals.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,

[SEAL.]

By M. H. SMITH, *President*.

Attest: J. H. ELLIS, *Secretary*.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

[SEAL.]

By J. W. THOMAS, *President*.

Attest: J. H. AMBROSE, *Secretary*.

1. The above lease was authorized by board of directors of the Nashville, Chattanooga & St. Louis Railway, to be executed at their meeting September 9, 1896, by vote of 8 to 1. [See minute book 6, p. 119-127 of Nashville, Chattanooga & St. Louis Railway directors.] The lease was thereupon signed by both parties.

2. For discussion of suit of J. S. Rogers, to set aside this lease, see preceding chapter.

J. W. PHILLIPS

TO

L. & N. R. R. Co.

} *Deed to Tennessee Midland Railroad.*

This indenture, made and entered into by and between J. W. Phillips, party of the first part, and the Louisville & Nashville Railroad Company, a corporation organized and existing under the laws of the State of Kentucky, party of the second part,

Witnesseth, That, in consideration of the sum of one million four hundred and ninety-one thousand eight hundred and sixty-four dollars (\$1,491,864), being at the rate of eleven thousand dollars (\$11,000) per mile of the line of railroad formerly of the Tennessee Midland Railway Company, cash in hand paid by the party of the second part, the receipt whereof is hereby acknowledged, the party of the first part does hereby grant, bargain, sell, assign, transfer, and convey unto the said party of the second part, its successors and assigns, all and singular, the railroad and property formerly of the Tennessee Midland Railway Company, and described as follows:

Extending from within the city of Memphis, in the State of Tennessee, and running thence in an easterly direction through the counties of Shelby, Fayette, Hardeman, Madison, Henderson, and Decatur, to Perryville, on the west bank of the Tennessee river, in the said last named county; also, all the lands, tenements, and hereditaments acquired or used for the purposes of the railroad aforesaid, including all rights of way, roadbed, superstructures, and tracks thereon, all stations, stationhouses, depots, and all grounds used in connection therewith; all rails, railways, tracks, sidings, switches, bridges, fences, turntables, water-tanks, viaducts, culverts, main, passenger, and other depots,

Consideration.

Description of property.

freighthouses, machine shops, docks, wharves, telegraph lines, and all other buildings, structures, and fixtures, whatsoever, acquired for the use of said railway, or the business thereof, or for the construction, maintenance, or operation thereof; also, all the locomotives, tenders, cars, equipments, and other rollingstock, machinery, tools, weighing scales, wood, fuel, oil, and materials whatsoever, together with all the equipments and appurtenances thereunto belonging; also all the corporate rights, privileges, franchises, including the franchise to be a corporation, and also

**Franchises,  
etc., pass.** all other property of every character and description, real, personal or mixed, and wheresoever situate, formerly of said railway company, except its books of account, and choses in action, and money on hand, and also except certain town lots donated to said railway company at or near the town of Parsons; including all the property of said railway company, which was directed to be sold by the final decree of foreclosure and sale entered on the 9th day of July, 1895, by the circuit court of the United States, for the western division of the western district of Tennessee, at Memphis, in the case of St. Louis Trust Company, complainant, against the Tennessee Midland Railway Company, defendant, and which was sold under said decree by J. H. Watson and J. B. Clough, special masters appointed by said decree to the party of the first part hereto, on the 17th day of October, 1895, which said sale was duly confirmed by said court, by orders entered in said cause, bearing dates respectively, the 28th day of October, 1895, and the 29th day of November, 1895, except the books of account, choses in action and money on hand hereinbefore excepted; and being the same property heretofore conveyed, by virtue of said sale and the confirmation thereof, to the party of the first part hereto, by said J. H. Watson and J. B. Clough, special masters, by their deed bearing date the 13th day of December, 1895, and also conveyed to the party of the first part hereto, by the Tennessee Midland Railway Company, by its quitclaim deed, bearing date the 13th day of December, 1895, and by William L. Huse and John Overton Jr., re-



ceivers of said railway and property by their deed, bearing date the 14th day of December, 1895; including herein and intending to include, all the property acquired as aforesaid, including all the property acquired in behalf of said railway company by William L. Huse and John Overton, Jr., as receivers thereof; except the books of account, choses in action, and cash above referred to, and certain town lots donated to said railway at or near the town of Parsons.

To have and to hold unto the said Louisville & Nashville Railroad Company, and to its successors and assigns in fee simple, absolute, and forever, together with all the rights, privileges, and franchises appertaining thereto, as fully and completely as the said J. W. Phillips, party of the first part, holds or enjoys the same, or is entitled to hold and enjoy the same, by virtue of the conveyance made to him as aforesaid by said J. H. Watson and J. B. Clough, special masters, and by the said Tennessee Midland Railway Company, and by William L. Huse and John Overton, Jr., receivers, but subject to all the limitations and restrictions imposed on the said railway and property herein conveyed and on the purchaser thereof, by virtue of the final decree of foreclosure and sale entered by the said United States circuit court for the western division of the western district of Tennessee, in the case of St. Louis Trust Company, complainant, against the Tennessee Midland Railway Company, defendant, above referred to. And reference is hereby made to the said final decree of foreclosure and sale, and to the orders confirming said sale, and to said deed of J. H. Watson and J. B. Clough, special masters, and of the Tennessee Midland Railway Company, and of William Huse and John Overton, Jr., receivers, executed and delivered to the party of the first part for further and full particulars, both in respect to the property herein conveyed and to the conditions, limitations, and restrictions thereon, and on the purchaser thereof imposed.

And the said party of the first part hereby covenants with the party of the second part that he will warrant and forever defend the title to all and singular the property hereinbefore conveyed to the party of the second

Title  
warranted.

part, and its successors and assigns, against the lawful claims of all persons claiming or to claim the same, or any part thereof, by, through or under him, but no further or otherwise.

In witness whereof, the party of the first part has hereunto set his hand and seal, this the fourteenth day of December, 1895. [SEAL.] J. W. PHILLIPS.

STATE OF MISSOURI, )  
CITY OF ST. LOUIS. ) ss.

Before me, Charles H. Anderson, a notary public within and for the city and state aforesaid, personally appeared J. W. Phillips, the within named bargainor, with whom I am personally acquainted, and who acknowledged that he executed the within deed for the purposes therein contained.

My term of office expires on the fourteenth day of November, 1897.

Witness my hand and seal of office, this the fourteenth day of December, 1895.

CHARLES H. ANDERSON,  
*Notary Public, City of St. Louis, Mo.*

**Deed, where registered.**—The above deed was registered August 4, 1896, in Shelby county, in book 250, p. 220; in Fayette county, August 15, 1896, book 21, p. 213; in Hardeman county, August 7, 1896, in book "K K," pp. 108-111; in Madison county, August 7, 1896, in book 54, p. 479; in Henderson county, August 17, 1896, in book 15, pp. 103-107; in Deature county, August 8, 1896, in book 13, p. 261.

## CHAPTER XL.

## PADUCAH, TENNESSEE &amp; ALABAMA RAILROAD.

## [PADUCAH BRANCH.]

(Chartered in Tennessee under general acts 1875, ch. 142, and in Kentucky by special act. See charters, further on in this chapter.)

**How acquired by Nashville, Chattanooga & St. Louis Railway.**—The Paducah, Tennessee & Alabama Railroad Company, in order to raise funds to construct its road, issued and disposed of a series of bonds, secured by mortgage on its railroad, properties, franchises, etc. Default being made in the payment of the coupons, the St. Louis Trust Company, as trustee, on October 28, 1893, filed a bill in the circuit court of the United States [in equity] for the district of Kentucky, at Paducah, and subsequently, on July 1, 1895, a supplemental bill, asking a foreclosure of said mortgage. The said trustee also, on October 28, 1893, filed a bill, as *ancillary* to the other, in the circuit court of the United States for the eastern division of the western district of Tennessee, at Jackson, and on July 1, 1895, a supplemental bill, for the same purpose.

A decree of foreclosure was rendered July 10, 1895, by said United States circuit court for the district of Kentucky, at Paducah, and by the United States circuit court for the eastern division of the western district of Tennessee, at Jackson, on July 11, 1895, and A. B. Lamb and J. R. Puryear, as special masters, were ordered to sell said railroad, property, franchises, etc., in default of the payment of the amounts in said decree ordered to be paid. The amounts not being paid, the special masters, on October 18, 1895, in conformity to the terms of the decree, sold said Paducah, Tennessee & Alabama Railroad, properties, franchises, etc., to the highest bidder for cash, at the courthouse door in Paducah, Kentucky. The purchaser



was J. W. Phillips, who secured the property for the sum of \$1,000,000. On November 29, 1895, a decree was entered confirming the sale and directing the special masters to execute a deed therefor. In December, 1895, the special masters executed a deed to J. W. Phillips of said railroad, franchises, properties, etc., in conformity with the terms of the decree. Said deed was properly acknowledged, and registered in the register's office of Carroll county, Tenn., December 8, 1895, in book 14, pp. 262-68; in Henderson county, Tenn., December 26, 1895, in book 14, pp. 344-49; in Henry county, Tenn., December 20, 1895, in book 4, pp. 232-37; in Calloway county, Ky., December 23, 1895, in book 7, p. 341; in Marshall county, Ky., December 21, 1895, in book 20, pp. 153-59; in McCracken county, Ky., December 23, 1895, in book 50, p. 542; in Graves county, Ky., December 23, 1895, in book 15, pp. 196-203.

The receivers of the company, Wm. L. Huse and John Overton, Jr., also executed a deed to him, conveying all their right, title, and interest in and to the property to him. This deed was properly acknowledged and registered in the register's office of Henry county, Tennessee, December 20, 1895, in book 4, pp. 241-45; in Henderson County, Tennessee, December 26, 1895, in book 14, p. 350; in Carroll county, Tennessee, December 23, 1895, in book 14, pp. 273-77; in Calloway county, Kentucky, December 23, 1895, in book 7, p. 358; in Marshall county, Kentucky, December 21, 1895, in book 20, pp. 164-69; in Graves county, Kentucky, December 23, 1895, in book 15, pp. 210-15; in McCracken county, Kentucky, December 23, 1895, in book 50, p. 553.

The Paducah, Tennessee and Alabama Railroad Company, itself also executed a deed to him, conveying all its right, title, and interest in and to the railroad properties, franchises, etc., to him. This deed was properly acknowledged and registered in the register's office of McCracken county, Kentucky, December 23, 1895, in book 50, p. 548; in Graves county, Kentucky, December 23, 1895, in book 15, pp. 204-9; in Marshall county, Kentucky, December 21, 1895, in book 20, pp. 160-4; in

Calloway county, Kentucky, December 23, 1895, in book 7, p. 351; in Henry county Tennessee, December 20, 1895, in book 4, pp. 237-41; in Henderson county, Tennessee, December 26, 1895, in book 14, pp. 357-61; in Carroll county, Tennessee, December 23, 1895, in book 14, pp. 268-72.

On December 14, 1895, J. W. Phillips sold said road, property, franchises, etc., to the Louisville & Nashville Railroad Company, and executed a deed therefor. Said deed is fully set out in the next chapter, and shows the places where it is registered.

On December 14, 1895, the Louisville & Nashville Railroad Company executed a temporary lease of this road, together with the Tennessee Midland Railroad, which latter road it had also purchased, to the Nashville, Chattanooga & St. Louis Railway. This lease is fully set out in chapter thirty-nine herein, and shows the places where registered.

1. As the *lease* of the Tennessee Midland Railroad and the Paducah, Tennessee & Alabama Railroad were executed in one instrument, and as the lease has heretofore been inserted in this compilation in ch. 39, on the "Tennessee Midland Railroad," it will be here omitted.

2. For deed of Louisville & Nashville Railroad Company to Tennessee Midland Railroad, see ch. 39 herein.

On September 9, 1896, a permanent or formal lease of the two roads was drawn up and signed by the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway. The lease was to be operative for a period of ninety-nine years from that date, at a rental of \$154,650 per annum, payable semiannually. This was five per cent. on the amount paid by the Louisville & Nashville Railroad Company (\$3,093,000) for the two roads. The lease further provided that, should the Louisville & Nashville Railroad Company be called upon to expend additional sums for improvements, etc., on the two roads, an additional rental should be paid of five per cent. on the amount or amounts so expended. This lease is also fully set out in chapter 39 herein.

(1) **Legality of lease; Rogers' suit.**—For a full discussion of this, see "note," with similar heading, on page 457 herein, in chapter 38, concerning the Tennessee Midland Railroad. The two roads were leased to

the Nashville, Chattanooga & St. Louis Railway in the same instrument, and as the validity of the lease has been discussed in the chapter referred to, it is here omitted for economy of space.

**Distance road built when leased.**—When the Nashville, Chattanooga & St. Louis Railway leased this road it had been completed and was in operation from Paducah, Kentucky, to Lexington, Tennessee, a distance of about 118.18 miles, at which point it connected with the Tennessee Midland Railroad, thus forming a continuous line, with the latter road, to Memphis, Tennessee.

The distance the Tennessee Midland Railroad had been built when it was leased to the Nashville, Chattanooga & St. Louis Railway was from Memphis to Perryville, a distance of about 135.56 miles.

**Company, how and where chartered; route.**—The Paducah, Tennessee & Alabama Railroad Company was formed by the consolidation of the Paducah & Tennessee Railroad Company, a corporation of Kentucky; the Paducah & Tennessee Railway Company, a corporation of Tennessee, and the Paducah & Tennessee Railroad Company, a corporation of Tennessee.

The *Paducah & Tennessee Railroad Company*, of Kentucky, was chartered by Acts Kentucky 1853-4, ch. 681, as amended by Acts Kentucky 1873, ch. 315, p. 394, approved March 5, 1873; Acts 1888, ch. 300, approved February 25, 1888, and Acts 1892, ch. 85, p. 211, which became a law August 6, 1892, the latter act ratifying the consolidation.

The *Paducah & Tennessee Railway Company*, of Tennessee, and the *Paducah & Tennessee Railroad Company*, of Tennessee, were both chartered under the *general Acts of Tennessee 1875*, ch. 142, sec. 6.

The Paducah & Tennessee Railroad Company, of Kentucky, was authorized by its charter and amendments to build a road from the terminus of any railroad bridge or transfer that might be built or established across the Ohio river, in the county of McCracken, to any station or depot in the city of Paducah, or junction with any railroad company in said city, and to extend its line of road by single, double, or treble tracks, in a southeastwardly direction, through the counties of



McCracken, Marshall and Calloway, to the line of the State of Tennessee, in Calloway county, as the company might select.

The Paducah & Tennessee Railway Company, of Tennessee, was authorized by its charter to construct a railroad from a point upon the north line of the State of Tennessee, in Henry county, so as to connect with the Paducah & Tennessee Railroad, of Kentucky, and running thence in a southerly direction to a point within one-half a mile of the courthouse in Paris, Tenn.

The Paducah & Tennessee Railroad Company, of Tennessee, was authorized by its charter to construct a road from a point at or near the city of Paris, Tenn., from a connection with the tracks of the Paducah & Tennessee Railway Company, of Tennessee, thence in a southerly direction across said state, upon the most possible and practical line, to a point on the south line of said state in the county of Wayne. All of these charters are fully set out further on in this chapter.

On July 1, 1889, the stockholders of the above companies met at their respective offices and unanimously voted to consolidate their roads. On July 15, 1889, articles of consolidation and agreements were drawn up and signed by the respective companies, and the new company so organized was given the name of the Paducah, Tennessee & Alabama Railroad Company. The articles of consolidation were registered in the secretary of states' office of Kentucky and Tennessee, and may be found further on in this chapter.

(1) **Legality of consolidation.**—The consolidation was legal under Acts Ky., as set out in code 1894, § 770. See also § 555. It was legal under Acts Tenn., 1871, ch. 69; 1877, ch. 72, sec. 2; 1867-68, ch. 72, sec. 1; 1887, ch. 188, as set out in Shannon's Code of Tennessee as § 1522, *et seq.* The consolidation was made in conformity with these acts. The Paducah & Tennessee Railroad, of Kentucky, had power to consolidate under Acts Ky., 1888, ch. 300, sec. 3. See act in next chapter.

(2) **Consolidation approved.**—By Acts Ky., 1892, ch. 85, p. 211, which became a law August 6, 1892, the consolidation of the above companies was approved and confirmed. The act is set out in next chapter herein.

**Width of right of way.**—[*In Tennessee*]. The Paducah, Tennessee & Alabama Railroad Company was formed by the consolidation of the Paducah & Tennessee Railway

Company, of Tennessee, the Paducah & Tennessee Railroad Company, of Tennessee, and the Paducah & Tennessee Railroad Company, of Kentucky, as heretofore explained. By virtue of the consolidation it fell heir to all the rights, privileges, and franchises of those respective companies. This being so, the width of its right of way will now have to be determined by the provisions of the original charters of those companies. As the Paducah & Tennessee Railway Company, of Tennessee, and the Paducah & Tennessee Railroad Company, of Tennessee, were both chartered under the general acts of Tennessee, 1875, chapter 142, sec. 6, the width of their right of way, from Lexington, Tenn., to the Kentucky state line, would have to be determined in the same way. In their charters there are no clauses granting specified numbers of feet as a right of way, in the absence of any *contract* with the original landowners, as was done in the charter of the Nashville, Chattanooga & St. Louis Railway. Section 9 of their charter, however, provided that the said company should have the right to appropriate, as an easement, a right of way not exceeding two hundred feet—one hundred on each side of the center line of said roads—over the lands of any person through which the line of track may be located. Under this section the two companies, or their successors, the Paducah, Tennessee & Alabama Railroad Company, could have originally condemned any number of feet, up to and including two hundred, for a right of way. Whatever number of feet was originally condemned, however, would now be binding upon the Nashville, Chattanooga & St. Louis Railway and its lessor, the Louisville & Nashville Railroad Company, unless additional proceedings are instituted; as will be hereafter explained. Should no purchase or condemnation have been had at all, then the entry and construction of the road would be regarded as an *appropriation* of so much of the land as the law authorized, which is two hundred feet in Tennessee, and the Nashville, Chattanooga & St. Louis Railway, as the lawful lessee, and the Louisville & Nashville Railroad Company, as the lawful purchaser thereof, would be entitled to that number.

3 Lea (Tenn.), 478. If a *purchase* or *gift* from the landowner was made, then, of course, the deed would control if mention is made of the *width* therein. If no *width* is specified, then the law would doubtless presume the statutory width of two hundred feet was intended. 98 Ala., 647. See also 3 Lea (Tenn.), 478.

[*In Kentucky.*] The road from the Tennessee state line to Paducah, Kentucky, was built under the original charter of the Paducah & Tennessee Railroad Company, of Kentucky, as before explained, and its charter must control over that part of the road. By referring to its charter, which is fully set out further on in this chapter, it will be found that there is no clause in it granting specified numbers of feet as a right of way, in the absence of any *contract* with the original landowner, as was done in the charter of the Nashville, Chattanooga & St. Louis Railway. Section 1 of its charter, however, provided that "the company is hereby authorized to lay out the road not exceeding *one hundred feet wide* throughout the whole length, and for the purpose of depots, cuttings, and embankments, and for the purpose of necessary turnouts, and for obtaining stone and gravel, may take as much more land as may be necessary for the construction and security of said road," etc. Under this section, the Paducah & Tennessee Railroad Company, of Kentucky, or its successor, the Paducah, Tennessee & Alabama Railroad Company, could have originally condemned any number of feet up to and including one hundred for a *right of way*, and as much more for depots, etc., as was necessary. Whatever number of feet was originally condemned, however, would now be binding upon the Nashville, Chattanooga & St. Louis Railway and its lessor, the Louisville & Nashville Railroad Company. Should no purchase or condemnation have been had at all, then the entry and construction of the road would doubtless be regarded as an *appropriation* of so much of the land as the charter authorized, which was one hundred feet for a right of way, and the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway, as the lawful purchaser and lessee thereof, respect-



ively, would be entitled to that number. 3 Lea (Tenn.), 478. If a *purchase* or *gift* from the landowner was made, then, of course, the deed would control, if mention is made of the width therein. If no *width* is specified, then the law would doubtless presume the statutory or charter width of one hundred feet was intended. 98 Ala., 647. See, also, 3 Lea (Tenn.), 478.

For full discussion of width of right of way, together with kindred subjects, see "*Eminent Domain*," "*Right of Way*," herein. Refer to index.

## ORIGINAL CHARTER OF THE PADUCAH AND TENNESSEE RAILROAD COMPANY [OF KENTUCKY].

[Chartered by Acts Kentucky, 1853-4, ch. 681.]

**SECTION 1.—Incorporation, name, general powers, route, width of right of way, land for other purposes.**—*Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That Alfred Boyd, L. S. Trimble, L. M. Flournoy, J. M. Bigger, Wm. Smedley, A. Rankin, D. Watts, Wm. Nolen, R. S. Ratcliffe, J. B. Husbands, G. H. Morrow, H. M. McCarty, J. C. Calhoun, Samuel Rice, John H. Terril, and Samuel Purcel, of the county of McCracken; R. L. Mayes, R. K. Williams, Wm. Beadles, and Lucien Anderson, of the county of Graves, and State of Kentucky; John H. Dunlap, C. D. Venable, B. C. Brown, Govy Cox, and Robert Caldwell, of the county of Henry, and State of Tennessee, with such other persons as shall associate with them for that purpose, are constituted a body politic and corporate, by

**Incorporators.** the name of the Paducah & Tennessee Railroad Company; and by that name to sue and be sued, plead and be impleaded, in any court of this state; to make and have a common seal, and the same break, alter, and renew at pleasure. And this company is hereby vested with all powers, privileges and immunities, which are or may be necessary to carry into effect the purposes and objects of this act, hereinafter set forth. And said company or corporation is hereby authorized and empowered to locate, construct, and finally complete a railroad, or way, with as many sets of

**Name.**

**General Powers.**

tracks as they may deem necessary, from some suitable point at the town of Paducah, or from any point on the **Route**.

New Orleans & Ohio Railroad, to the south boundary of this state, in a direction to Paris, or other point in Henry county, Tennessee, on such route as shall be deemed best and most expedient; and transport, take, and carry property and persons upon said railroad, or way, by the power and force of steam, of animals, or of any mechanical or other power, or any combination of them, which said company may choose to apply. And for the purpose of constructing said railroad, or way, the said company is hereby authorized to lay out the road not exceeding one hundred feet wide, through **Width of Right of Way.**

the whole length. And for the purpose of depots, cuttings, and embankments, and for the purpose of necessary **Land for Other Purposes.** turnouts, and for obtaining stone and gravel, may

take as much more land as may be necessary for the construction and security of said road, with permission to make any lawful contract with any other railroad corporation in relation to the business of said company; and also to make joint stock with any other railroad corporation; *Provided*, That all damages that may be occasioned to any person or corporation, by taking of any such land or materials aforesaid, for the purposes aforesaid, shall be paid for by said company in the manner hereinafter provided.

1. **Incorporation.**—The above act, incorporating this company, was re-enacted by Acts Ky. 1873, ch. 315, p. 394, sec. 1, approved March 5, 1873. See act in next chapter.

2. **Incorporators.**—By Acts Ky. 1873, ch. 315, p. 394, sec. 2, the incorporators were changed to J. M. Bigger, John C. Noble, L. S. Tribble, P. Palmer, Campbell Parker, J. H. Stroud, John L. Irvan, R. L. Ellison, and Howell Smith. See act itself in next chapter.

3. **Route.**—The route of this road, as authorized above, was amended by Acts Ky. 1873, ch. 315, p. 394, sec. 3, approved March 5, 1873. See act itself, in next chapter. The amendment, however, was subsequently *repealed* by Acts 1888, ch. 300, sec. 5, approved February 25, 1888, which act may, also, be found in next chapter, and which act, by section 1 thereof, authorized the company to "build and operate the railroad in the city of Paducah, by and with the consent of the city council of said city, and county of McCracken, in the State of Kentucky, from the terminus of any railroad bridge or transfer that may be built or established across the Ohio river in said county of McCracken, to any station or

depot in the city of Paducah, or junction with any railroad company in said city, and may extend its line of road, by single, double, or treble tracks, in a southeastwardly direction, through the counties of McCracken, Marshall, and Calloway, to the line of the State of Tennessee, in Calloway county, as said railroad company may select."

4. **May hold and condemn land.**—By Acts Ky. 1888, ch. 300, sec. 1, approved February 25, 1888, the company was authorized to establish and construct such depots, sidings, turntables, shops, transfer landings, and such other offices or structures as may be deemed expedient by the company, and may purchase, lease, or otherwise acquire real estate and personal property for its railroad tracks, transfer landings, depots, sidings, shops, offices, and all other purposes of said railroad company. In the event it cannot agree with the owner for the purchase of any land or material for the use or construction of said railroad, it may condemn the same, under the general law of this State, for its purposes and uses." See act itself in next chapter.

5. **Franchise made perpetual.**—By Acts Ky. 1888, ch. 300, sec. 1, approved February 25, 1888, the franchise of the Paducah & Tennessee Railroad Company was made *perpetual*. See act itself in next chapter.

6. **Name changed.**—On July 1, 1889, the stockholders of this company, together with those of the Paducah & Tennessee Railway Company, of Tennessee, and the Paducah & Tennessee Railroad Company, of Tennessee, met at their respective offices, and unanimously voted to consolidate the three companies, under Acts Ky., as set out in Code of 1894, § 770 [see, also, § 555], and Acts Tenn., as set out in Shannon's Code, § 1522 *et seq.* On July 15, 1889, articles of agreement were drawn up and signed by the respective companies for this purpose, and the name of the consolidated companies changed to the "Paducah, Tennessee & Alabama Railroad Company." See articles of agreement further on in this chapter. Subsequently, by Acts Ky. 1892, ch. 85, p. 211, which became a law August 6, 1892, the consolidation was approved and confirmed. This act may also be found in next chapter. It may be mentioned that the Paducah & Tennessee Railroad Company, of Kentucky, had the power to consolidate under Acts Ky. 1888, ch. 300, sec. 3.

7. **May indorse bonds of cities, counties, etc., when.**—By Acts Ky. 1888, ch. 300, sec. 4, the company was authorized to indorse the bonds of any county, city, town, civil or school district issued in aid of its construction. See act itself in next chapter.

8. **May consolidate with other roads.**—By same act, section 3, the company was authorized to unite, consolidate, or make running arrangements with any other railroad within or without the state. See act itself in next chapter.

**SEC. 2. Capital stock; value of shares.**—That the capital stock of said company shall not exceed one million five hundred thousand dollars, to be divided into shares of fifty dollars each, which shall be deemed personal property, and may be trans-



ferred in such manner and at such places as the by-laws of said company shall direct; *Provided*, That said company may commence the construction of said road, with all the powers and privileges contained in this act, whenever the sum subscribed shall exceed two hundred thousand dollars.

**Capital increased.**—By acts Ky. 1888, ch. 300, sec. 3, approved February 25, 1888, the capital stock was fixed at \$3,000,000, with power on the part of the directors to increase or decrease the stock to the actual amount expended in its construction and equipment.

**SEC. 3. Books opened, where; capital stock not to exceed what.**—That the persons named in the first section of this act, or a majority of them, shall open books to receive subscriptions to the capital stock of said company, at such time and places as they or a majority of them may appoint, and shall give such notice of the time and place of opening said books as they may deem reasonable, and shall receive said subscriptions under such regulations as they may adopt for the purpose. And if more than six thousand shares of stock shall be taken or subscribed, they shall have the power to make the shares as subscribed the capital stock of said company; *Provided*, They shall not exceed thirty thousand shares, and in case the subscription should exceed thirty thousand shares, the same shall be reduced and apportioned in such manner as may be deemed most beneficial to the corporation.

(1) **Capital increased.**—See note to section 2 of this charter.

**SEC. 4. Powers, number, quorum; secretary and treasurer, how chosen.**—That the immediate government and direction of the affairs of said company shall be vested in a board of directors, to consist of twelve persons, who shall be shareholders, who shall be chosen by the stockholders of said company in the manner hereinafter provided, and shall hold their offices until others are duly elected and qualified to take their places as directors. And the said directors, seven of whom (the president being one) shall be a quorum for the transaction of business, shall elect one of their members to be president of the board, who shall also be president of said company. They shall also choose a secretary, and such other officers as they

may deem necessary; and a treasurer, who shall give bond with security to said company, in such sum as the directors may require, for the faithful performance of his trust.

This road having been purchased by the Louisville & Nashville Railroad Company, and leased by it to the Nashville, Chattanooga & St. Louis Railway, it now forms part of the general system of the two latter companies, and is controlled by their respective directors.

**SEC. 5. Stockholders' meetings, voting, proxies, election of directors.**—That the persons authorized by the third section of this act to open the books for subscription to the capital stock are hereby authorized, after the books of subscription to the capital stock of said company are closed, or when the sum subscribed shall exceed two hundred thousand dollars, to call the first meeting of the stockholders of said company, in such way and at such time and place as they may appoint, for the choice of directors of said company; and in all meetings of the stockholders of said company each share shall entitle the holder thereof to one vote, which vote may be given by said stockholder in person or by lawful proxy. And the annual meetings of the stockholders of said company for the choice of directors shall be holden at such time and place, and upon such notice, as the said company in their by-laws may provide.

For method of electing directors in Nashville, Chattanooga & St. Louis Railway, which company now operates this road as a part of its general system, see ch. 1 herein, secs. 8, 9.

**SEC. 6.—Failure to elect directors; vacancies.**—That in case it shall so happen that an election of directors shall not be made on any day appointed by the by-laws of said company, said company shall not for that cause be deemed to be dissolved, but such election may be holden, on any day which shall be appointed by the directors of said company, and said directors shall have power to fill any vacancy which may occur by death or otherwise.

**SEC. 7. Powers of directors; corporation may acquire land, how; contract for right of way.**—That the directors shall have full power to make and prescribe such by-laws, rules, and regulations as they shall deem needful and proper, touching the disposition and management of the stock, property, estate,

and effects of said company, not contrary to this charter, or the laws of this state or of the United States; the transfer of shares, the duties and conduct of their officers and servants, touching the election of, and meeting of, the directors, and all matters whatsoever which may appertain to the concerns of said company. Said company is also hereby authorized to purchase, receive, and hold such estate as may be necessary and convenient in accomplishing the objects for which this incorporation is granted; and may, by their agents, surveyors, engineers, and servants, enter upon all lands and tenaments through which they may deem it necessary to make said road, and to survey, lay out, and construct the same, and to agree and contract for the land, or right of way, with owners through which they may intend to make said road. In case said lands belong to the estate of any deceased person, then with the executor of such; or in case of the same belonging to a minor, or a person *non compos mentis*, then with his or her guardian or guardians; or in case said lands be held by trustees of school sections, or other trustees of estates, then with such trustees; and the said executors, guardians and trustees are hereby declared competent for such estate, or minor, to contract with said company, for the right to use, occupy, and possess the lands of such estates, minors, or trustees, so far as may be necessary to the purpose of said railroad; and the act and deed of such executors, administrators, guardians, and trustees in relation thereto, shall pass the title in said land in the same manner as if said deed or act was made or done by a legal owner of full age; and such executor, guardian, or trustee shall account to those interested, upon their respective bonds, for the amount paid him in pursuance of such agreement and compensation. And if the said parties representing land prefer, they may refer the question of compensation to arbitrators mutually chosen, whose award, or that of their umpire in case of disagreement, shall vest title according to its terms.

May acquire  
Land.

Land for  
Right of  
Way.

Arbitra-  
tion.

1. **May acquire land.**—By Acts Ky. 1888, ch. 300, sec. 1. approved February 25, 1888, the company was authorized to "establish and construct



such depots, sidings, turntables, shops, transfer landings, and such other offices or structures as may be deemed expedient by the company, and may purchase, lease or otherwise acquire real estate and personal property for its railroad tracks, transfer landings, depots, sidings, shops, offices, and all other purposes of said railroad company. In the event it cannot agree with the owner for the purchase of any land or materials for the use or construction of said railroad, it may condemn the same under the general law of this state for its purposes and uses." See act itself in next chapter.

2. **May receive gifts of.**—By same act, sec. 3, the company was authorized to receive gifts or donations of right of way, or of any other thing necessary or useful in the construction and operation of the road or branches.

**SEC. 8. Condemnation for right of way.**—That if the said company cannot agree with the owner of the land through which they may desire the road to pass, or with the executors, guardian, or trustee, it shall and may be lawful for the clerk of the circuit court of the county in which said land lies, on application of said company, or its agents, and he is required to issue a writ of *ad quod damnum*, commanding the sheriff that, without delay, he cause a jury of six good and lawful men to be upon such land on a day to be by said sheriff fixed and appointed, and whereof it shall be his duty to give notice to the owner, executor, administrator, guardian, or trustee, at least five days before such day, if they be within his county, or if not, or if the owner or owners be unknown, then notice shall be given by advertisement, to be by said sheriff posted and fixed on the dwelling house, if such there be, or in a public or conspicuous place, at least five days before such appointed day, and also by advertising the same in some newspaper published nearest the land, at least three weeks by weekly insertions prior to said day, and then cause said jury, after being duly sworn by said sheriff or justice of the peace, to make true inquest of the value of the land so taken, and of the damage that will be sustained by such owner or estate by reason of making such road through such land. If any such juror shall fail to appear, or, by reason of challenge for cause or otherwise, fail to sit on such inquest, the said sheriff shall fill said jury from the bystanders, and if they fail to render a verdict, the said sheriff shall again, on the same or subsequent

day, impanel a new jury or jurors, until a verdict be had. Such verdict and inquest, regularly certified by such sheriff, shall be returned to the office of the clerk of the circuit court of the county in which said land may be, and there remain among the records. And such verdict shall vest in said company the right to occupy and use such land for the purposes of said railroad, on the payment or tender of payment of the value of the land and of the damages thereon assessed against said company; and in case of persons absent or unknown, as aforesaid, the placing of the amount of damages to the credit of the owner, in the hands of the clerk of the county court for the county in which such lands may lie, shall be deemed and taken as payment, and such clerks shall be liable on their bonds to make due payment of said money on demand.

1. **Condemnation.**—By Acts Ky. 1888, ch. 300, sec. 1, approved February 25, 1888, the company was given power to condemn, under the general laws of the state, land or material for the use or construction of said railroad. See act itself in next chapter.

2. **Condemnation.**—After the consolidation of this company with the Paducah & Tennessee Railway Company, of Tennessee, and the Paducah & Tennessee Railroad Company, of Tennessee, as heretofore explained, it was thought questionable whether or not condemnation could be made under the above section, on account of supposed irregularities in the consolidation. The legislature of Kentucky, however, to cure this defect, if any existed, passed an act approving and confirming the consolidation Acts Ky. 1892, ch. 85, p. 211. See act itself in next chapter.

3. **May receive gifts of.**—See note 2 to section 7 of this charter.

**SEC. 9. Time of holding inquest; clerk's fees, etc.**—That it shall be the duty of the sheriff to appoint and hold said inquest within ten days after the receipt of said writ of *ad quod damnum*, except in such cases of absence aforesaid, in which case thirty days shall be allowed him, and five days in addition are allowed him for every additional jury which he may have under said writ; and for every default therein the said sheriff shall be fined by the circuit court, at the instance of either party, not less than twenty nor more than one hundred dollars; and every juror and witness summoned shall be fined not less than ten dollars for nonattendance. Of all such fines, as well as costs, the circuit court of the county shall have jurisdiction.

There shall be allowed the following fees: To the clerk of the circuit court, for every writ of *ad quod damnum*, seventy-five cents; for receiving and filing inquest, seventy-five cents; to the sheriff for giving notice, seventy-five cents, beside printer's fees, not exceeding two dollars in each case; for holding inquest, five dollars, and for summoning witnesses, twenty-five cents each; to jurors, seventy cents per diem each. Which fees are not allowed until a verdict be returned and filed, and shall be taxed in the bill of costs and paid by the company; *Provided, however*, That, before the application for said writ, the said company may make a tender to the owner or owners of any such land a sum of money by them deemed equivalent to the damage to be sustained, and, upon refusal to accept the sum tendered, and a verdict for the same amount to a less sum, the costs shall be taxed to and paid by the owners of the land upon which the inquest is held.

**SEC. 10. Counties authorized to subscribe for stock, how.**—That it shall and may be lawful for any of the counties through which said road may pass, and they are hereby permitted, to subscribe and hold stock in said company upon the same terms and conditions, and subject to the same restrictions, with other stockholders; *Provided, however*, That a majority of the qualified voters in such county, who shall cast their votes as herein provided for, shall be in favor of the subscription for such stock, and that no one county shall subscribe stock in said company to a larger amount than one hundred and fifty thousand dollars.

By Acts Ky. 1888, ch. 300, sec. 2, approved February 25, 1888, counties, cities, towns, and civil districts were allowed to subscribe to the capital stock of this company in a method therein set out. See act itself in next chapter.

**SEC. 11. Subscription to be voted upon, how.**—That, whenever the company aforesaid shall request the county court of any county through which the said road will pass to subscribe the bonds of said county for any portion of the capital stock of said company, not exceeding the amount hereby authorized, the county court shall, within sixty days thereafter, on a day



to be by it designated, cause the vote of the qualified voters of the county, at the several election precincts and places of voting in said county, to be taken upon the question whether or not the court shall subscribe the stock as proposed; and in all matters pertaining to the taking of said vote, the subscribing for said stock, the issuing and execution of said bonds, the levying and collecting a tax to pay the interest thereon, and the appropriation and disbursements of the funds arising therefrom, the county court shall be governed and regulated (except so far as is provided for in this act) by the provisions of an act of the general assembly of Kentucky, entitled, An act to authorize the county of Graves to hold railroad stock, approved January 3, 1852.

All provisions in this section in conflict with Acts Ky., approved February 25, 1888, were repealed by section 5 of the latter act. See act itself in next chapter.

**SEC. 12.—May borrow money, issue bonds, etc., how.**—That should the president and directors, or a majority of the whole number elected, consider it expedient for the purpose of aiding the stockholders or hasten the completion of the contemplated road, it shall be lawful for them to borrow money on the credit of said company, not exceeding five hundred thousand dollars at any one time, at any rate of interest not exceeding seven per cent. per annum; and the said company may issue such evidences of such indebtedness as may be deemed proper, and secure the same by giving a lien upon the property and assets of the company; and the said company may sell said bonds, or evidences of debt at such rate of discount and at such places as to them may seem advisable. And the said company shall also have power to indorse and guaranty the payment of bonds issued for the purchase of stock in said road by any city, county, or town.

**Borrow money, issue bonds—mortgage.**—By Acts Kentucky 1888, ch. 300, sec. 4, approved February 25, 1888, the company was authorized to borrow any amount of money not exceeding three million dollars, and to execute the bonds of the company in such amounts and at such times as may be agreed upon by the company, in a manner therein set out, and to secure the payment thereof by deed of trust. See act itself in next chapter.

**SEC. 13.—Tolls, toll houses, etc.**—That said company is hereby authorized to regulate the time and manner in which goods and passengers shall be transported, taken, and carried on said road, and shall have power to erect and maintain toll houses and other buildings for the accommodation of their concerns, as they may deem suitable for their interests; and it shall be lawful for the company, from time to time, to fix, regulate, and receive the tolls and charges by them to be received for transportation of persons or property on their railroad, or way, aforesaid, hereby authorized to be constructed, erected, built, or used, or any part thereof.

**SEC. 14.—Injury to or obstruction of property, engines, cars, etc., punishable.**—That if any person or persons will, or shall willfully do, or cause to be done, any act or acts whatsoever, whereby any building, construction, or works of said company, or any engines, machine, or structure, or any matter or thing appertaining to the same shall be stopped, obstructed, impeded, weakened, injured, or destroyed, the person or persons so offending shall be deemed guilty of a misdemeanor, and shall forfeit and pay to said company double the amount of damages sustained by reason of such offenses or injury, to be recovered in the name of said corporation, with costs of suit, by action of debt.

**SEC. 15.—Payments on subscription, how made; enforcement of.**—That the directors of said company may require the payment of the sum or sums subscribed to the capital stock of said company, at such times and in such proportions, and upon such conditions as they may deem fit; and in case any stockholder shall refuse or neglect to make payment pursuant to the requisition of the board of directors, the stock of such stockholders may be sold by the directors of said corporation, at public auction, after the lapse of ninety days from the time when the payment became due, and the surplus money, the avails of such sale, after deducting the payments due, and interest thereupon, and the necessary expenses of sale, shall be paid over to such delinquent stockholder.

**SEC. 16. Taxation.**—That the property owned by said com-

pany shall at all times be subject to taxation in the same manner and to the same extent as similar property owned by other railroad companies.

1. This section repealed by Acts Ky., approved February 25, 1888. See act in next chapter.

**SEC. 17. Time for completion.**—That if said railroad shall not be commenced within five years from the passage of this act, and shall not be finished within this state in ten years from the time of commencement thereof, then this act shall be null and void.

Approved March 8, 1854.

1. The above section was *repealed* by Acts 1873, ch. 315, p. 394, sec. 7. Approved March 5, 1873. See act itself in next chapter.

2. By Acts 1888, ch. 300, sec. 6, it was provided that the work of constructing the railroad should commence in two years, and the road completed in five years from the passage of the act. See act itself in next chapter.

## ORIGINAL CHARTER OF THE PADUCAH & TENNESSEE RAILWAY COMPANY.

[OF TENNESSEE.]

Chartered under General Acts Tenn. 1875, ch. 142, sec. 6.

### STATE OF TENNESSEE—CHARTER OF INCORPORATION.

**SECTION 1. Incorporation, name, route, general powers.**—*Be it known*, That R. L. Ellison, S. H. Caldwell, J. T. Williams, George D. Vanhorn, A. B. Lamb, W. D. Kendall, J. L. Lemonds, J. N. Thomason, W. A. Carter, and W. H. Hudson, citizens over the age of twenty-one years, are herein and hereby organized and constituted a body politic and corporate in accordance with the laws of the state of Tennessee, under the name of the Paducah & Tennessee Railway Company, with perpetual succession, for the purpose of laying out, constructing, and operating and maintaining a line of railway with one or more tracks from a point in said state, upon the north line of said state, in the county of Henry in said state, and at the point on said state line where the tracks of the Paducah & Tennessee Railroad, of Kentucky, strikes the same,



and to connect with the same, thence in a southerly direction to a point within one-half of a mile of the courthouse in said city of Paris, in said Henry county, in the state of Tennessee. The general offices of said company are hereby located in the city of Paris in said county of Henry. The capital stock of said company or corporation is for the present fixed at twenty-five thousand dollars per mile of said road and side tracks, as proposed to be constructed, with the privilege of increasing the same from time to time, as, in the opinion of the board of directors, the interest of said company may require. The said incorporators shall constitute the first board of directors of said company, who shall remain in office until their successors are chosen; vacancies in said board may be filled by a majority of the remaining members thereof. Said directors may bargain and sell said capital stock and local subsidy bonds and the bonds of said company, in whole or in part, in payment for the construction of said road or any part thereof; said stock shall be divided into shares of one hundred dollars each.

SEC. 2. [This section, together with succeeding sections, up to and including section 41, are the same as the corresponding sections of the charter granted the Decatur, Chesapeake & New Orleans Railway Company by act Tennessee, and hence are here omitted for economy. See sections on page 414 *et seq.* herein.]

SEC. 42. [In addition to the powers aforesaid this corporation shall have the right to guarantee or purchase the *bonds* or stock of other corporations; to lease or purchase the roads and property of other corporations, and operate the same; to sell or lease its own road and property to any other corporation, in whole or in part; to unite and connect the track or tracks of its road with the tracks of any other corporation, and by resolution of its board of directors and stockholders consolidate and merge the capital stock of any other corporation into and with that of its own capital stock, or its own capital stock with that of any other corporation; to construct its road across or upon any highway, county road or street or alley of any city, town, or village, but in such manner as to allow

wagons and other vehicles safely to pass upon the same; to construct the track or tracks of its road over or across the track or tracks of any other company, and to unite and connect with the same, and finally to possess the right to do all other acts and things necessary or proper to be done in the construction or operation of said road, or any part thereof whatsoever the same may be or be called; and all other rights and privileges, powers and immunities which are now, or which may hereafter be conferred upon similar corporations in said state by any general or special law, are expressly adopted and claimed for and to inure to the use and benefit of this corporation whatever such rights, powers, privileges, or immunities may be or be called.]

The above part in brackets is not in the regular form of charters granted under the Acts of 1875, ch. 142. It is largely embraced in the general laws, however, which became, upon their passage, a part of its organic existence.

We, the undersigned, apply to the state of Tennessee by virtue of the law of the land for a charter of incorporation, for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, this twentieth day of March A. D. eighteen hundred and eighty-eight (1888).

A. B. LAMB,  
W. D. KENDALL,  
J. L. LEMONDS,  
J. N. THOMASON,  
W. A. CARTER,  
W. H. HUDSON,  
R. L. ELLISON,  
S. H. CALDWELL,  
J. T. WILLIAMS,  
GEO. D. VANHORN.

The above charter was properly acknowledged and registered in the secretary of state's office, in book "S.," p. 57, March 24, 1888; in Henry county, Tenn., in book "Y" of deeds, pp. 578-588.

## ORIGINAL CHARTER OF THE PADUCAH & TENNESSEE RAILROAD COMPANY.

[OF TENNESSEE.]

Chartered under General Acts Tenn., 1875, ch. 142, § 6.

### STATE OF TENNESSEE—CHARTER OF INCORPORATION.

**SECTION 1. Incorporation, name, route, general powers.—**  
*Be it known*, That R. L. Ellison, S. H. Caldwell, J. T. Williams, Geo. D. Vanhorn, A. B. Lamb, W. D. Kendall, J. L. Lemonds, J. N. Thomason, W. A. Carter, and W. H. Hudson, citizens over the age of twenty-one years, are herein and hereby organized and constitute a body-politic and corporate in accordance with the laws of the State of Tennessee, under the name of the Paducah & Tennessee Railroad Company, with perpetual succession, for the purpose of laying out, constructing, and operating a line of railway, with one or more tracks, from a point at or near the city of Paris, in Henry county, in said state, and from a connection with the tracks of the Paducah & Tennessee Railway Company at or near said city, thence in a southerly direction across said state, upon the most passable and practical line to be chosen by said company, to a point upon the south line of said state, in the county of Wayne. The capital stock of said company is for the present fixed at three million of dollars, with the privilege of increasing the same from time to time, as in the opinion of the board of directors of said company the interest thereof may require. The said incorporators shall constitute the first board of directors of said company, and remain in office until their successors are chosen. Vacancies in said board may be filled by a majority of the remaining members thereof. Said directors may bargain and sell said capital stock. The local subsidy bonds, if any, are voted to said company, and the bonds of said company, in whole or in part, in payment for the construction of said road or any part thereof. Said capital stock shall be divided into shares of one hundred dollars each.



SEC. 2. [This section, together with succeeding sections up to and including section 41, are the same as the corresponding sections of the charter of the Decatur, Chesapeake & New Orleans Railway Company, by Acts Tennessee, and hence are here omitted for economy. See sections referred to therein, on page 414, *et seq.*]

SEC. 42. [In addition to the powers aforesaid, this corporation shall have the right to guarantee or purchase the bonds or stock of other corporations, to lease or purchase the roads and property of other corporations, and operate the same; to sell or lease its own road and property to any other corporation, in whole or in part; to unite and connect the track or tracks of its road with the tracks of any other corporation, and, by resolution of its board of directors and stockholders, consolidate and merge the capital stock of any other corporation into and with that of its own capital stock, or its own capital stock with that of any other corporation; to construct its road across any stream of water, navigable or otherwise, not, however, to interfere with the use and navigation of the same; to construct its road across or upon any highway, county road or street or alley of any city, town or village, but in such manner as to allow vehicles safely to pass upon the same; to construct the track or tracks of its road over or across the track or tracks of any other company, and to unite and connect with the same, and finally to possess the right to do all other acts and things necessary or proper to be done in the construction or operation of said road, or any part thereof, whatsoever the same may be or be called: and all other rights and privileges, powers and immunities which are now or which may hereafter be conferred upon similar corporations in said state, by any general or special law, are expressly adopted and claimed for and to inure to the use and benefit of the corporation, whatever such rights, powers, privileges or immunities may be or be called,] we, the undersigned, apply to the State of Tennessee, by virtue of the law of the land, for a charter of incorporation for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, this the twentieth day of March, A. D. eighteen hundred and eighty-eight (1888).

•  
W. D. KENDALL,  
J. L. LEMONDS,  
J. N. THOMASON,  
W. A. CARTER,  
W. H. HUDSON,  
R. L. ELLISON,  
S. H. CALDWELL,  
J. T. WILLIAMS,  
GEO. D. VANHORN.  
A. B. LAMB.

1. The above part in brackets was inserted in this charter, though it is not in the general form of charters. under Acts of 1875, ch. 142. It is largely embraced in the general laws. however, which become, upon their passage, a part of its organic existence.

2. **Where registered.**—The above charter was properly acknowledged and registered in the secretary of state's office. March 24, 1888. in book "S," p. 53; in Henry county, Tenn., in book "Y" of deeds, p. 587.

## **ARTICLES OF CONSOLIDATION CREATING THE PADUCAH, TENNESSEE & ALABAMA RAIL- ROAD COMPANY.**

**Parties.**—Articles of consolidation made and entered into by and between The Paducah & Tennessee Railroad Company, a corporation legally created and existing under and in accordance with the laws of the state of Kentucky, party of the first part, and the Paducah & Tennessee Railway Company, a corporation legally organized and existing under and in accordance with the general laws of the state of Tennessee, party of the second part, and the Paducah & Tennessee Railroad Company, a corporation likewise organized and legally existing under and in accordance with the general laws of the said state of Tennessee, party of the third part. Witnesseth: for that—

**Preamble.**—WHEREAS, The party of the first part has the legal right to construct and operate, and has commenced to construct a line of railroad from the city of Paducah in said state of Kentucky, thence in a southerly direction to a point

upon the south line of said last named state, in the county of Calloway therein; and,

WHEREAS, The party of the second part, has the like legal right to construct and operate, and has commenced to construct a line of railway from the same point upon the line dividing the said states of Kentucky and Tennessee, at which the line of the said party of the first part terminates, thence in a southerly direction to a point at or near the city of Paris, in Henry county, in said state of Tennessee; and,

WHEREAS, The party of the third part has the legal right to construct and operate, and has commenced to construct a line of railroad from the same point, at or near to the said city of Paris, at which the line of the said party of the second part terminates, thence in a southerly direction across the said last named state to a point upon the line dividing the states of Tennessee and Alabama in Wayne county, Tenn.; and,

WHEREAS, Each of said companies has full authority of law to unite and consolidate its corporate property, capital stock, and franchises with those of any other company or companies, whether created by the laws of the same or different states; and,

WHEREAS, The stockholders of each of the said companies, parties hereto, have respectively, at legal meetings thereof, by resolutions unanimously adopted, respectively requested, authorized and directed, that the property, capital stock, and franchises of said respective companies should be united and consolidated into one undertaking and corporate entity; which said action of said stockholders has in all things been fully concurred in by like resolutions of each of the respective boards of directors of said companies, parties hereto, and the respective presidents thereof, for them respectively ordered to execute these articles of consolidation, and to be attested by their respective secretaries; now, therefore,

*Be it known*, That, for the purposes of, and in consideration of, securing, and to secure the mutual benefits and advantages resulting to, and to result from such union and consolidation of said companies, parties hereto, respectively, and in order to



consummate such consolidation and unity of interest, as aforesaid, it is herein and hereby mutually stipulated, covenanted, and agreed by and between the said companies, parties hereto, as follows:

**ARTICLE 1. Consolidation, name, liabilities, and powers.**—That said companies, parties hereto, be and the same are hereby united and consolidated into one corporate entity, which shall be known and called “The Paducah, Tennessee & Alabama Railroad Company,” and that the corporate seal thereof shall be the name thereof, in circular form, encircling the word “seal:” which said consolidated company shall be and become liable in fact and in law for, and shall pay all just debts, contracts, and obligations legally owing, incurred or entered into by either of the said parties hereto; and shall have, own, possess, hold, receive and enjoy, all and singular, the corporate rights, subscriptions to capital stock, choses in action, privileges, powers, property, donations to, effects and estate of every character, present and prospective, as claimed by, coming to, belonging to, held, possessed or enjoyed by the said companies, parties hereto, respectively, whatever the same may be or be called.

**ART. 2. Capital stock, value of shares.**—The amount of the capital stock of said consolidated company shall be five million (\$5,000,000) dollars, and be divided into shares of one hundred (\$100) dollars each, and be issued at the rate of \$20,000 per mile of constructed road, reserving, however, the right and privilege of increasing or decreasing the same from time to time as may be or become necessary for the uses and purposes of such consolidated company.

**ART. 3. Stock in old companies to be exchanged for stock in new.**—The stockholders of said companies, parties hereto, shall each surrender all and every share of such capital stock so held by them respectively to the secretary of such consolidated company and receive in lieu and exchange therefor an equal amount of the capital stock of such consolidated company, dollar for dollar.

**ART. 4. Directors, number of, etc.**—That the board of di-

rectors of such consolidated company shall be composed of nine (9) stockholders thereof, which number may be increased or decreased at the will of such stockholders at any regular meeting thereof; the first board of directors of such consolidated company shall be composed of the following named persons, to wit: Thomas H. Puryear, Charles Reed, E. P. Noble, B. C. Keys, L. C. Lynn, John C. McElraith, J. J. Head, A. B. Lamb, John L. Booth, who shall hold office until the next regular meeting of such stockholders and until their successors are elected.

**ART. 5. Officers elected, how; books of old companies to be turned over to.**—The persons named in the foregoing article as directors of such consolidated company shall immediately, after the execution of these articles by said parties hereto, convene and organize by electing a president and vice-president from among their number, and also a secretary, auditor, treasurer, and general solicitor, who may or may not be members of such board of directors; and thereupon the respective secretaries and treasurers of the said parties hereto shall promptly deliver and turn over to the secretary and treasurer respectively of such consolidated company all books, records, papers, accounts, and documents of every character, and all moneys, stocks, bonds, vouchers, contracts, and other things of value appertaining to their said offices or either of them.

**ART. 6. Consolidation consummated; franchises, etc., of old companies vest in new.**—That upon the execution of these articles of consolidation the same shall be binding upon the said parties hereto, and such consolidation shall be, and be considered as fully consummated without further action upon the part of the parties hereto, or either of them, or any officer thereof; and thereupon each of said companies, parties hereto, with all their charter rights, privileges, powers, immunities, capital stock and subscriptions to capital stock, corporate property, present and prospective, of every character and description, and franchises, shall be and become fused, united, and consolidated into one corporate entity and existence, under the name and style as set forth in

the first paragraph of these articles, and thereupon the president and secretary of such consolidated company shall promptly make out, or cause to be made out, and filed and recorded, any and all such statements and transcripts relating to such consolidation as may be required to be made out, filed or recorded, in any office or place, by the laws of the said states of Kentucky and Tennessee, or either of them.

**ART. 7. Bonds to be issued; mortgage provided, for what.**—It is further agreed that the proper officers of such consolidated company shall, upon behalf thereof, execute in due form of law a mortgage or deed of trust, one or more, to such trustee as may be chosen by the parties in interest, covering the property and franchises of such company, to secure the payment of a series of the bonds thereof, to become due and payable, at such times, and bear such rate of interest, and be of such amount, and of such terms and provisions as will conform to and satisfy the requirements of the contracts heretofore made by the parties hereto with Messrs. McIntyre, Concannon & Co., and assigns, for the construction of the several roads of the said parties hereto, which said last-mentioned contracts are hereby in all things ratified, confirmed and adopted as the contracts of such consolidated company, and are to be performed by it in good faith.

It is understood that the said series of bonds as above agreed to be issued by the said consolidated company are to be used to take up and retire bonds, if any, that may have been issued by any of the parties hereto prior to such consolidation, and for the other and general purposes of such consolidated company.

**ART. 8. Directors given power to carry consolidation into effect.**—The board of directors of such consolidated company shall have full power, and is hereby fully authorized to do and perform any and all acts and things necessary or proper to be done in order to carry such merger and consolidation into effect, according to the true intent and object of the parties hereto, as expressed herein and in the various resolutions adopted authorizing this consolidation, and as counsel learned in the law may advise.



In testimony whereof, the said Paducah & Tennessee Railway Company, party of the first part herein, has, by authority of the stockholders and board of directors herein set forth, and by authority of the law of the said state of Kentucky, caused these articles of consolidation to be signed by the president thereof, and to be attested by the signature of the secretary thereof (said company having no corporate seal), upon this the fifteenth day of July, A. D. 1889.

PADUCAH & TENNESSEE R. R. Co.,  
By T. H. PURYEAR, *President*.

Attest: ED P. NOBLE, *Secretary*.

In testimony whereof, the said Paducah & Tennessee Railway Company, party of the second part herein, has, by authority of its stockholders and board of directors as hereinabove set forth, and by authority of the law of the said state of Tennessee, caused these articles of consolidation to be signed by the president thereof and to be attested by the signature of the secretary thereof (said company having no corporate seal provided), upon this the first day of July, A. D. 1889.

“THE PADUCAH AND TENNESSEE RAILWAY CO.”

By J. J. HEAD, *President*.

Attested: By W. A. CARTER, *Secretary*.

In testimony whereof, the said Paducah & Tennessee Railroad Company, party of the third part herein, has by authority of its stockholders and board of directors as hereinabove set forth, and also by authority of the law of the said state of Tennessee, caused these articles of consolidation to be signed by the president thereof, and to be attested by the signature of the secretary thereof (said company having no corporate seal provided so as to be affixed hereto), upon this the first day of July, A. D. 1889.

THE PADUCAH & TENNESSEE RAILROAD CO.,

Attested: By A. B. LAMB, *President*.

By J. L. LEMONDS, *Secretary*.

The above articles of agreement were properly acknowledged and registered in the secretary of state's office of Tennessee, in book “P,” p. 622; in the secretary of state's office of Kentucky, in book —, p. —.

CERTIFICATE OF THE RECORDS OF THE VARIOUS CONSTITUENT  
COMPANIES EFFECTING THE CONSOLIDATION INTO THE  
PADUCAH, TENNESSEE & ALABAMA RAIL-  
ROAD COMPANY.

**Name of companies.**—I, J. W. Fristoe, secretary of the Paducah, Tennessee & Alabama Railroad Company, do hereby certify that the following is a synopsis of the records of seven different meetings of the stockholders and directors of the Paducah & Tennessee Railway Company: The Paducah & Tennessee Railroad Company of the state of Kentucky, the Paducah & Tennessee Railroad Company of the state of Tennessee, and the Paducah, Tennessee & Alabama Railroad Company, as taken from the record or minute books of said companies.

1. **Paducah & Tennessee Railway Company, of Tennessee; stockholders' meeting.**—At a meeting of the stockholders of the Paducah & Tennessee Railway Company, held in the city of Paris, Tenn., on July 1, 1889, at 9 o'clock A.M., all the stockholders being present in person or represented by legal proxy, the following action was taken, recorded on said record book, pages 62 to 66, both inclusive: That a proposed consolidation of the Paducah & Tennessee Railway Company with The Paducah & Tennessee Railroad Company, of the state of Kentucky, and the Paducah & Tennessee Railroad Company, of the state of Tennessee, was approved, and the board of directors of the Paducah & Tennessee Railway Company was authorized and directed to make such consolidation. Minutes signed by A. B. Lamb, chairman, and A. H. Duncan, secretary.

2. **Paducah & Tennessee Railway Company, of Tennessee; directors' meeting.**—Pursuant to the above the board of directors of the said Paducah & Tennessee Railway Company, at a meeting held in the city of Paris, Tenn., on July 1, 1889, the following action was taken, all the directors of said railway company being present: That the Paducah & Tennessee Railway Company, with all its properties, capital stock, and franchises, was duly consolidated with the Paducah & Tennes-

see Railroad Company, of the state of Kentucky, and the Paducah & Tennessee Railroad Company, of the state of Tennessee, under the consolidated name and style of The Paducah, Tennessee & Alabama Railroad Company, as shown by the minutes of said railway company on pages 67 to 71, both inclusive; said minutes being signed by J. J. Head, president, and A. H. Duncan, secretary.

**3. Paducah & Tennessee Railroad, of Kentucky; stockholders' meeting.**—At a meeting of the stockholders of the Paducah & Tennessee Railroad Company, of the state of Kentucky, held in the city of Paducah, Ky., July 15, 1889, all the stockholders being present, either in person or by legal proxy, the following action was had: The proposed consolidation of this, the Paducah & Tennessee Railroad Company, of Kentucky, with the Paducah & Tennessee Railway Company and the Paducah & Tennessee Railroad Company, of the state of Tennessee, was approved, and the board of directors of the Paducah & Tennessee Railroad Company, of Kentucky, was authorized and directed to make such consolidation; said minutes were signed by T. H. Puryear, president.

**4. Paducah & Tennessee Railroad Company, of Kentucky; directors' meeting.**—Pursuant to above, at a meeting of the board of directors of the Paducah & Tennessee Railroad Company, of the state of Kentucky, held in the city of Paducah, Ky., at 3 o'clock P.M., on the fifteenth day of July, 1889, all the members being present, the following action was taken: The Paducah & Tennessee Railroad Company, of Kentucky, with all its properties, capital stock and franchises, was duly consolidated with the Paducah & Tennessee Railway Company and the Paducah & Tennessee Railroad Company, of the state of Tennessee, under the name and style of The Paducah, Tennessee & Alabama Railroad Company, the minutes of said meeting being recorded in the minute book of the said Paducah & Tennessee Railroad Company, of Kentucky, on pages 36 to 39, inclusive, and signed by T. H. Puryear, president.

**5. Paducah & Tennessee Railroad Company, of Tennessee; stockholders' meeting.**—At a meeting of the stockholders of



the Paducah & Tennessee Railroad Company, of the state of Tennessee, held at the city of Paris, Tenn., at 10 o'clock A.M., on July 1, 1889, at which all the stockholders were personally present, the following action was had: The proposed consolidation of the Paducah & Tennessee Railroad Company, of the state of Tennessee, with the Paducah & Tennessee Railway Company and the Paducah & Tennessee Railroad Company, of the state of Kentucky, was approved, and the board of directors of this, The Paducah & Tennessee Railroad Company, of the state of Tennessee, were authorized and directed to make such consolidation, the minutes of said meeting being recorded in the minute or record book of said Paducah & Tennessee Railroad Company, of the state of Tennessee, on pages 120 to 123, inclusive, and signed by A. B. Lamb, chairman.

**6. Paducah & Tennessee Railroad Company, of Tennessee; directors' meeting.**—Pursuant to the above, at a meeting of the board of directors of the Paducah & Tennessee Railroad Company, of the state of Tennessee, at which a full board were present, said meeting held in the city of Paris, Tenn., July 1, 1889, the following action was had: The Paducah & Tennessee Railroad Company, of the state of Tennessee, with all its properties, capital stock and franchises, was duly consolidated with the Paducah & Tennessee Railway Company, of the state of Tennessee, and the Paducah & Tennessee Railroad Company, of the state of Kentucky, under the name and style of The Paducah, Tennessee & Alabama Railroad Company, as shown by the minutes of said meeting, recorded on the minute or record book of said company, on pages 124 to 127, inclusive; said minutes signed by A. B. Lamb, president, and A. H. Duncan, secretary *pro tem*.

**7. Paducah, Tennessee & Alabama Railroad Company; directors' meeting, consolidation.**—A meeting of the board of directors of the Paducah, Tennessee & Alabama Railroad Company was held in the city of Paducah, Ky., at 4 o'clock P.M., on July 15, 1889, all the directors being present except J. L. Boothe; and said board of directors proceeded to organize by the election of officers and the adoption of by-laws. The con-

solidation of the Paducah & Tennessee Railway Company, of the state of Tennessee, the Paducah & Tennessee Railroad Company, of the state of Kentucky, and the Paducah & Tennessee Railroad Company, of the state of Tennessee, forming The Paducah, Tennessee & Alabama Railroad Company, was recognized, and said articles of consolidation ordered spread upon the record, the minutes of which meeting appear on the record book of said Paducah, Tennessee & Alabama Railroad Company, on pages 45 to 60, inclusive, and signed by T. H. Puryear, president.

In witness whereof I have hereunto set my hand and affixed the seal of The Paducah, Tennessee & Alabama Railroad Company, this the seventh day of July, 1891.

[SEAL.]

J. W. FRISTOE,  
*Sec'y P., T. & A. R. R. Co.*

## CHAPTER XLI.

LEASE. DEED, AND ACTS RELATING TO AND AMENDING CHARACTER OF PADUCAH. TENNESSEE & ALABAMA RAILROAD COMPANY, AND ORIGINAL COMPANIES FROM WHICH IT WAS FORMED.

**LEASE.**

[The Paducah, Tennessee & Alabama Railroad and the Tennessee Midland Railroad were both leased at the same time and in the same instrument by the Louisville & Nashville Railroad Company to the Nashville, Chattanooga & St. Louis Railway. The lease contract was fully set out in chapter 39 herein, on the Tennessee Midland Railroad, and will not again be copied. Reference is here made to it, however.]

**ACT KENTUCKY IN RELATION TO "PADUCAH & TENNESSEE RAILROAD COMPANY."**

[OF KENTUCKY.]

[Acts Ky. 1873, ch. 315, p. 394.]

**SECTION 1. Incorporation of company re-enacted.**—*Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That an act, entitled "An act to incorporate the Paducah & Tennessee Railroad Company," approved March 8, 1854, be, and the same is hereby, re-enacted, except as otherwise herein provided.

**SEC. 2. New incorporators substituted.**—That J. M. Bigger, John C. Noble, L. S. Tribble, P. Palmer, Campbell Parker, J. H. Stroud, John L. Irvan, R. L. Ellison, and Howell Smith, be, and they are hereby, appointed and substituted as corporators, in lieu of the persons named in the first section of said act.

**SEC. 3. Route changed.**—That the company be authorized to locate and construct the road from Paducah, or any point on the Elizabethtown & Paducah Railroad, below the Tennessee river, to any point on the Tennessee state line, in the



direction to Paris, or anywhere east of a line to Paris, and its capital stock may be increased to seven millions of dollars.

The above section was *repealed* by sec. 5 of Acts 1888, ch. 300, approved February 25, 1888. See act itself in this chapter.

**SEC. 4. Authority to change to narrow gauge; taxation.**—That the company may make its road a narrow gauge, if it deems such a gauge proper, in which event the road shall be assessed for taxation at only one half the valuation per mile now prescribed by law for ordinary railroads, and the road shall not be assessed or listed for taxation until one-half of said line be put in operation.

The above section was *repealed* by sec. 5 of Acts 1888, ch. 300, approved February 25, 1888. See act itself herein in this chapter.

**SEC. 5. Counties may subscribe for stock, how.**—That before any county shall be permitted to subscribe and hold stock in said company, a majority of all the justices of the peace in commission in the county shall concur in making the order to submit the proposition to a vote, and a majority of two-thirds of all the votes cast shall be cast at a general election in favor of the proposition before any county or court shall subscribe stock.

The above section was *repealed* by sec. 5, of Acts 1888, ch. 300, approved February 25, 1888. See act itself in this chapter.

**SEC. 6. Cities and towns may subscribe for stock, how.**—That any city or town may subscribe and hold stock in said company to an amount not exceeding three hundred thousand dollars; *Provided, however,* That before such city or town shall be permitted to subscribe such stock a majority of two-thirds of all the qualified voters of such city or town shall, at a regular city or town election, cast their votes in favor of the subscription.

The above section was *repealed* by sec. 5, of Acts 1888, ch. 300, approved February 25, 1888. See act itself in this chapter.

**SEC. 7. Section 17 of charter repealed.**—That section seventeen (17) of the original act be, and the same is hereby, repealed.

**SEC. 8. Right to amend act reserved.**—The legislature

hereby reserves the right to amend, modify or repeal this act at its discretion.

SEC. 9. **When act to take effect.**—That this act take effect from its passage.

Acts of 1873 (Ky.), ch. 315, p. 394, approved March 5, 1873.

## AMENDMENT OF CHARTER OF THE PADUCAH & TENNESSEE RAILROAD COMPANY.

[OF KENTUCKY.]

[Acts Ky. 1888, ch. 300.]

SECTION 1. **Route, hold real estate, condemn land, franchise made perpetual.**—*Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the Paducah & Tennessee Railroad Company, as now organized, shall have the right to build and operate a railroad in the city of Paducah by and with the consent of the city council of said city, and county of McCracken, in the state of Kentucky, from the terminus of any railroad bridge or transfer that may be built or established across the Ohio river in said county of McCracken, to any station or depot in the city of Paducah or junction with any railroad company in said city, and may extend its line of road by single, double or treble tracks in a southeastwardly direction through the counties of McCracken, Marshall, and Calloway to the line of the state of Tennessee, in Calloway county, as said railroad company may select. It may establish and construct such depots, sidings, turntables, shops, transfer landings, and such other offices or structures as may be deemed expedient by the company, and may purchase, lease or otherwise acquire real estate and personal property for its railroad tracks, transfer landings, depots, sidings, shops, offices, and all other purposes of said railroad company. In the event it cannot agree with the owner for the purchase of any land or material for the use or construction of said railroad, it may condemn the same under the general law of this state for its purposes and uses. The franchise of said Paducah & Tennessee Railroad Company is hereby made perpetual.

**SEC. 2. Counties, towns, etc., allowed to subscribe for capital stock, how.**—That any county, city, town, civil district, into or through which it is proposed to construct said railroad, or the Murray common school district, No. 35, in Calloway county, may subscribe to the capital stock of the Paducah & Tennessee Railroad Company in any amount and on such conditions as may be agreed on, not exceeding one hundred thousand dollars, and pay the same in the bonds of such county, city, town, civil or common school district at par, said bonds to be negotiable in such sums and at such times as any county, city, town or common school district may deem proper, to bear a rate of interest not exceeding six per centum per annum, the interest to be represented by coupons attached to the bonds, payable semiannually in the city of Paducah. The bonds of any county, civil or common school district to be signed by the county judge and county clerk, with seal of the county, the coupons to be signed by the clerk alone, with seal of the county. The bonds of any city to be signed by the mayor and clerk of such city, with seal of city, the coupons to be signed by the clerk alone, with seal of city. The bonds of any town to be signed by the chairman of the trustees of such town and clerk, with seal of town, and the coupons to be signed by clerk alone, with seal of town. Said bonds to be executed and delivered by such county, city, town, civil or common school district upon such terms and conditions as may be agreed on by such county, city, town, civil or common school district. But before any such subscription shall become valid and binding, if of a county, civil or common school district, the county judge of any county, with a majority of the justices of the peace of any county, shall have the discretionary power to call a special election in any county, civil or common school district, giving not less than fifteen nor more than sixty days' notice, at which election the legal voters shall vote for and against the matter of subscription of stock to said railroad company; and if at any such election a majority of the qualified and legal voters of any such county, civil or common



school district, voting at such election shall vote in favor of the subscription of stock to said railroad company, the county judge of the county in which such election is held shall make the subscription accordingly; if to a city, the proposition to subscribe stock may, in the discretion of the council of any city, be submitted by the council of such city on such terms and conditions as may be agreed on; and if to a town, by the trustees of such town in their discretion; and if at such special election the proposition to subscribe stock be voted for by a majority of the legal and qualified voters of such city voting at such special election, the mayor shall make the subscription of stock to said railroad company in the name of any such city; and if the proposition to subscribe stock to said railroad company at any special election be voted in favor by a majority of the legal voters of any such town, voting at any such election, then the chairman of the board of trustees of any such town shall make the subscription of stock to said railroad company in the name of such town. When the vote is by a city, the city council of such city shall fix the time when any special election shall be held under this act. When the vote is by a town, the trustees of any such town shall fix the time when the election shall be held, and when the vote is by a county, civil district or the common school district, the county judge of the county in which the election is proposed to be held shall fix the time when such election shall be held, and the officers authorized by law to compare polls in county elections shall count and certify the result of any and all elections under this act. When the vote is by a city, the officers authorized by law to compare the polls in election for city officers shall count and certify the result of all elections under this act, and when such vote is by a town, the trustees of any such town shall count and certify the result of any and all elections under this act. In case any county shall subscribe to the capital stock of said railroad company under this act, it is made the duty of the county court of such county so subscribing to levy annually a tax on the taxpayers of the county, on all property liable to taxation under the revenues laws of

this state, sufficient to pay the interest on the bonds as the same matures, with the costs of collecting the same, and to appoint a collector and have the said tax collected and applied to the payment of the interest on such bonds, and when the bonds of the county become due and payable, in like manner to levy and have collected a tax to pay said bonds and cost of collecting said tax. If any civil district in any county shall subscribe to the capital stock of said railroad company, then the county court in which such subscription is made by any civil district shall make a like levy and have it collected and paid, but it shall be confined to the taxpayers and property within such civil district. In the event Murray common school district, No. 35, in Calloway county, subscribes to the capital stock of said railroad company the county court of Calloway county will make a like levy, appoint a collector, and have such tax collected, but will confine it to the taxpayers and taxable property in said district. In the event any city subscribes to the capital stock of said railroad company under this act, the council of such city shall levy and have collected from the taxpayers and taxable property of such city a like tax. In the event any town subscribes to the capital stock of said railroad company under this act, then the trustees of any such town are required to levy, appoint a collector, and collect from the taxpayers and taxable property of any such town a like tax and for a like purpose, which shall be by them so applied after paying interest on the bonds of any county, civil district or the Murray common school district, No. 35, of Calloway county, or any city or town, there shall remain a surplus in the hands of the collector for any one or more years, it is hereby made the duty of the county judge of any county, the council of any city, or the trustees of any town, to apply such surplus to the payment of any outstanding bonds of any such county, civil, Murray common school district, No. 35, city or town. All elections under this act shall be held at the voting places fixed by law in any county, city, town, and in Murray common school district, No. 35, in the town of Murray, and when in any civil district in any county the place

for holding any election under this act shall be fixed by the county judge of the county in which such special election is proposed to be held; *Provided*, That no bonds for subscription of stock shall be issued under this act until the railroad is completed and operated through the county, city, town or civil district voting such stock subscription to said railroad.

**SEC. 3. Capital stock increased, consolidation with other roads allowed; may receive gifts.**—That the capital stock of the Paducah & Tennessee Railroad Company is fixed at three millions of dollars with power on the part of its directors to increase or reduce the same to the actual amount expended in its construction and equipment. It may unite, consolidate or make running arrangements with any other railroad within or without the state. It may receive gifts or donations of right of way or of any other thing necessary or useful in the construction and operation of its road or branches, and it shall have all the powers necessary, convenient or proper to carry into effect the construction and operation of its said road under powers herein granted. •

**SEC. 4. May borrow money, issue bonds, mortgages, indorse bonds of counties, cities, etc.; other roads may indorse its bonds.**—That the Paducah & Tennessee Railroad Company is authorized to borrow any amount of money not exceeding three millions of dollars, and to execute the bonds of the railroad company for any such loans in such amounts and at such times as may be agreed on by said company; and the person or persons loaning the same, bearing any rate of interest not exceeding six per centum per annum, with coupons attached to represent the interest on said bonds to be paid semiannually, and the bonds and coupons to be made payable at some banking house or trust company in the city of New York, to be agreed on and printed or written on the face of the bonds and coupons. To secure the payment of such bonds with coupons as said railroad company may issue, it may execute and deliver a deed of trust on all its property, rights, and franchises in and out of this state. Said railroad company may indorse the bonds of any county, city, town, civil or common school dis-



trict issued in aid of its construction, and it may make arrangements with any railroad company in or out of the state of Kentucky to indorse or guarantee the payment of any bonds with coupons that it may issue in its construction, equipment or operation.

**SEC. 5. Sections of other acts repealed.**—That secs. 11 and 16 of the act of March 8, 1854, entitled “Act to incorporate the Paducah & Tennessee Railroad Company” and secs. 3, 4, 5, and 6 of an act approved March 5, 1873, entitled “An act to re-enact and amend the charter of the Paducah & Tennessee Railroad Company,” with all parts of said original and amended acts inconsistent or in conflict with this amendment are hereby repealed.

**SEC. 6. Counties, towns, etc., authorized to create sinking fund to pay bonds subscribed.**—The county court of any county, civil or common school district, council of any city or trustees of any town, may also levy and have collected a tax to create a sinking fund with which to pay any bond subscribed by any such county, civil or common school district under this act, before the same matures. Before any question to subscribe stock under this act is voted on, the railroad company shall deposit a sum of money to pay the legal costs of holding the election; *Provided*, That the work of constructing said railroad shall commence in two years and the road completed in five years from the passage of this act.

**SEC. 7.** This act shall take effect and be in force from its passage.

Approved February 25, 1888.

## CONSOLIDATION OF THE THREE COMPANIES APPROVED AND CONFIRMED.

[Acts Ky. 1892, ch. 85, p. 211.]

**Preamble.**—WHEREAS, The Paducah & Tennessee Railroad Company, a corporation chartered by various acts of the general assembly of this commonwealth as follows, to-wit: By an act approved March 8, 1854, and by an amendatory act approved March 5, 1873, and by a further amendatory act

approved February 25, 1888, was, by the third section of the last named act, duly authorized to "unite, consolidate or make running arrangements with any other railroad within or without this state;" and

WHEREAS, On the fifteenth day of July, 1889, said Paducah & Tennessee Railroad Company did consolidate with the Paducah & Tennessee Railway Company and the Paducah & Tennessee Railroad Company, the last two named being at the time corporations of the state of Tennessee, whose lines of railroad connected at the state line, between the states of Kentucky and Tennessee, with the line of the said Paducah & Tennessee Railroad Company so incorporated in this state, so as to form a continuous line running in a general southeasterly direction from the city of Paducah; and

WHEREAS, Said consolidated company, so made by said consolidation, did assume for such consolidated company the name of "The Paducah, Tennessee & Alabama Railroad Company," and in such name has constructed, and is now and has been operating and maintaining its said railroad, from the city of Paducah through the counties of McCracken, Marshall and Calloway, in this state, and into the state of Tennessee; therefore,

**SECTION 1. Consolidation of companies approved and confirmed.**—*Be it enacted by the General Assembly of the Commonwealth of Kentucky,* That the consolidation of the Paducah & Tennessee Railroad Company with the Paducah & Tennessee Railway Company and the Paducah & Tennessee Railroad Company—the last named two corporations in the State of Tennessee—under the name of the Paducah, Tennessee and Alabama Railroad Company, which consolidation was made and had on the fifteenth day of July, one thousand eight hundred and eighty-nine, be, and the same is hereby, approved, ratified, and confirmed.

**SEC. 2. Articles of agreement to be filed with secretary of state.**—That a copy of the articles of agreement and consolidation as aforesaid of said companies, duly certified by the president of such consolidated company, and attested by the

secretary thereof, under its corporate seal, be filed with the secretary of state, and lodged as a part of the records of his office, within ninety days from the date this act shall take effect.

**SEC. 3. When act to take effect.**—That no general law has been or can be enacted which will be applicable to this case, and the courts have no jurisdiction to grant the relief asked for, and the corporate existence of these consolidated companies being questioned, and their rights interfered with, and especially the right of said company to exercise the right of eminent domain for the purpose of its tracks and depot grounds; therefore, an emergency is hereby declared to exist, and this act shall take effect from and after its approval by the governor.

(Became a law August 6, 1892, the Governor not having signed or returned the same to the house in which it originated within the time prescribed by law.)

Acts of 1891-92-93 (Ky.), ch. 85, p. 211.

### DEED.

J. W. PHILLIPS AND WIFE, }  
                                   TO  
       L. & N. R. R. Co.        }

This indenture made and entered into by and between J. W. Phillips and Nora A. Phillips, his wife, who joins herein as party of the first part, for the purpose of releasing all claim to dower in any of the hereinafter described property, as parties of the first part, and The Louisville & Nashville Railroad Company, a corporation organized and existing under and by virtue of the laws of the state of Kentucky, party of the second part—

Witnesseth: That, in consideration of the sum of one million six hundred and one thousand two hundred and thirty-five dollars (\$1,601,235), being at the rate of thirteen thousand and five hundred dollars (\$13,500) per mile of the line of railroad formerly of the Paducah, Tennessee & Alabama Railroad Company, cash in hand, paid by the party of the second part, the receipt whereof is hereby acknowledged, the parties of the first part doth hereby grant,

Consideration.



bargain, sell, assign, transfer, and convey unto the said party of the second part, its successors and assigns, all and singular, the railroad and property formerly of the Paducah, Tennessee & Alabama Railroad Company, and described as follows:

Extending from within the city of Paducah, in the State of Kentucky, and running thence in a southerly direction through

**Description of property sold.** the counties of McCracken, Graves, Marshall, and Calloway, in the State of Kentucky, and thence through the counties of Henry, Carroll, and Henderson, in the State of Tennessee, to a junction with the Tennessee Midland Railway Company at or near the town of Lexington, in said county of Henderson; and, also, all its lands, tenements, and hereditaments, its extensions, side tracks, spur tracks, and franchises, and all the easements and appurtenances thereunto belonging or anywise appertaining; also, all its railroad, ways, and rights of way, its depot grounds, tracks, bridges, viaducts, culverts, and other structures, its depots, stationhouses, engine-houses, carhouses, freighthouses, woodhouses, warehouses, machineshops, workshops, superstructures, and fixtures; also, all its locomotives, tenders, cars, rolling stock, and other equipments; also, all its rails, ties, chairs, machinery, tools, implements, fuel, and all materials whatsoever used for or in respect to constructing, operating, repairing, or replacing the said railroad or any part thereof; together with all the equipments and appurtenances whatsoever belonging to any of the aforementioned property; and, also, all the franchises connected with or relating to the said railroad, its extensions, and

**Franchises, etc., pass.** branches, all its property and corporate franchises, including its franchise to be a corporation; together with, all and singular, the tenements, hereditaments, and appurtenances of said railroad, except its books of account and choses in action and money on hand, including and intending to include all the property of said railroad company which was directed to be sold by the final decrees of foreclosure and sale entered on the tenth day of July, 1895, by the circuit court of the United States for the district of Kentucky, at Paducah, and on the eleventh day of July, 1895, by the circuit court of

the United States for the eastern division of the western district of Tennessee, at Jackson, in the case of St. Louis Trust Company, complainant, against the Paducah, Tennessee & Alabama Railroad Company, defendant, and which was sold, under said decrees, by A. B. Lamb and J. R. Puryear, special masters appointed by said decrees, to J. W. Phillips, one of the parties of the first part hereto, on the eighteenth day of October, 1895, and which said sale was duly confirmed by said courts by orders entered in said cause, bearing dates, respectively, the twenty-eighth day of October, 1895, and the twenty-ninth day of November, 1895, and being the same property heretofore conveyed, by virtue of said sale and the confirmations thereof, to said J. W. Phillips, one of the parties of the first part hereto, by said A. B. Lamb and J. R. Puryear, special masters, by their deed, bearing date the thirteenth day of December, 1895, and by the Paducah, Tennessee & Alabama Railroad Company, by its quit-claim deed to said J. W. Phillips, bearing date the thirteenth day of December, 1895, and by William L. Huse and John Overton, Jr., receivers of said railroad and property, by their deed to said J. W. Phillips, bearing date the fourteenth day of December, 1895, including herein and intending to include in this conveyance all of the property acquired by said J. W. Phillips as aforesaid, including all of the property acquired on behalf of said railroad company from William L. Huse and John Overton, Jr., as receivers thereof, except the books, accounts, choses in action, and cash above referred to.

To have and to hold unto the said Louisville & Nashville Railroad Company, and to its successors and assigns in fee simple, absolute and forever, together with all the rights, privileges and franchises appertaining thereto as fully and completely as said J. W. Phillips, one of the parties of the first part, hereto holds or enjoys or is entitled to hold and enjoy the same by virtue of the said conveyance to him by said A. B. Lamb and J. R. Puryear, special masters as aforesaid, and by virtue of the conveyance to him by the Paducah, Tennessee & Alabama Railroad Company, as aforesaid, and by virtue of the

conveyance to him by William L. Huse and John Overton, Jr., receivers as aforesaid, but subject to all the conditions, limitations, and restrictions imposed on the said railroad and property herein conveyed and the purchaser thereof or his assigns by the final decrees of foreclosure and sale made and entered by the said United States circuit courts for the district of Kentucky at Paducah and for the eastern division of the western district of Tennessee at Jackson, in the case of St. Louis Trust Company, complainant, against the Paducah, Tennessee & Alabama Railroad Company, defendant, hereinbefore referred to. And reference is hereby made to the said final decrees of foreclosure and sale and to the orders confirming said sale entered in said cause and to the said deeds of A. B. Lamb and J. R. Puryear, special masters, and the Paducah, Tennessee & Alabama Railroad Company, and William L. Huse and John Overton, Jr., receivers, executed and delivered as aforesaid to said J. W. Phillips, one of the parties of the first part, for further and full particulars in respect both to the property herein conveyed and to the conditions, limitations and restrictions thereon and on the said purchaser thereof imposed.

And the said J. W. Phillips, one of the parties of the first part hereto, hereby covenants with the party of the second part that he will warrant and forever defend the title to  
**Warranty.** all and singular the property hereinbefore conveyed to the party of the second part, its successors and assigns, against the lawful claims of all persons claiming or to claim the same or any part thereof, by, through, or under him; but no further or otherwise.

In witness whereof, the parties of the first part have hereunto set their hands and seals, this, the fourteenth day of December, 1895.

[SEAL.]

J. W. PHILLIPS.

[SEAL.]

NORA A. PHILLIPS.

STATE OF MISSOURI, }  
*City of St. Louis.* } ss.

I, Charles H. Anderson, notary public for the city and state aforesaid, do hereby certify that the foregoing instrument of



writing from J. W. Phillips and wife, Nora A. Phillips, was this day produced to me by the parties, with whom I am personally acquainted, and which was acknowledged by the said J. W. Phillips to be his act and deed, and that he executed the same for the purposes therein contained; and the contents and effect of the instrument being explained to the said Nora A. Phillips by me, separately and apart from her husband, she thereupon declared that she did freely and voluntarily execute and deliver the same, to be her act and deed, and consented that the same might be recorded.

Given under my hand and seal of office, this fourteenth day of December, 1895. My term expires on the fourteenth day of November, 1897.

CHARLES H. ANDERSON,

*Notary Public, City of St. Louis, Mo.*

The above deed was properly registered in the register's office of Henry county, Tenn., July 31, 1896, in book 4, pp. 502-505; in Carroll county, Tenn., August 11, 1896, in book 14, p. 559; in Henderson county, Tenn., August 17, 1896, in book 15, pp. 106-109; in McCracken county, Ky., July 30, 1896, in book 51, p. 235; in Graves county, Ky., July 29, 1896, in book 15, p. 391; in Marshall county, Ky., August 4, 1896, in book 24, p. 293-297; in Calloway county, Ky., August 5, 1896, in book 8, p. 59.

## CHAPTER XLII.

LEASES BY NASHVILLE CHATTANOOGA & ST. LOUIS RAILWAY  
TO LOUISVILLE & NASHVILLE RAILROAD COMPANY OF  
TRACKS FROM LOUISVILLE & NASHVILLE RAIL-  
ROAD COMPANY'S OLD DEPOT IN NASHVILLE  
TO DECATUR DEPOT IN NASHVILLE.

N. C. & St. L. Ry., }  
TO } *Original Lease.*  
L. & N. R. R. Co. }

**Preamble.**—This agreement witnesseth: That, for the purpose of making closer connections, and of affording greater facilities for trade and travel, the Nashville & Chattanooga Rail-

road Company and the Louisville & Nashville Railroad Company have made the following contract, to wit:

1. **Name changed.** The corporate name was changed to the Nashville Chattanooga & St. Louis Railway May 30, 1873, by decree of chancery court at Nashville under Acts Tenn., 1870-1, ch. 54, p. 63. See Minute Book "X," pp. 229-2. See also decree itself in this compilation, p. 25.

2. **Agreement modified.** This agreement was subsequently modified on July 1, 1896. The modification instrument is fully set out further on in this chapter, and to which reference is here made for the terms thereof.

3. **Lease to Louisville & Nashville Terminal Company.**—The railroad tracks conveyed in this lease were subsequently, on April 27, 1896, subleased by the Louisville & Nashville Railroad Company to the Louisville & Nashville Terminal Company, the Nashville, Chattanooga & St. Louis Railway joining therein. This lease was registered in the register's office of Davidson county, Tenn., book 221, p. 175, and may be found further on in this compilation. The Nashville, Chattanooga & St. Louis Railway also executed a lease to the Terminal Company of certain tracks, which lease was registered in the register's office of Davidson county, book 220, p. 175, to which the Louisville & Nashville Railroad Company also subscribed on account of this agreement.

4. **Terminal company subleases tracks to Nashville, Chattanooga & St. Louis Railway and Louisville & Nashville Railroad Company.**—Subsequently, on June 15, 1896, the Louisville & Nashville Terminal Company leased certain portions of the tracks, together with various other properties, back to the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad Company jointly. This lease is registered in the register's office of Davidson county, book 222, p. 175. It is, also, fully set out herein. See chapter XLVIII.

1. **Description of tracks leased.**—The Nashville & Chattanooga Railroad Company agrees to give and guarantee to the Louisville & Nashville Railroad Company the right of way upon and perpetual use of the railroad tracks extending from the present depot of the Louisville & Nashville Railroad Company at College street, Nashville, to the depot grounds of the Nashville & Decatur Railroad Company, Nashville, for the purpose of running thereon passenger and freight trains and engines, as the same may be necessary, between said depot at College street and said depot of the Nashville & Decatur Railroad and between each of said depots and the union passenger depot. Said connecting tracks between the Louisville & Nashville Railroad depot and the Nashville & Decatur Railroad

depot is to run over part of the trestle connecting at present the Louisville & Nashville Railroad with the Nashville & Northwestern Railroad, and over a trestle or roadway to be constructed between the first named trestle and the Nashville & Chattanooga Railroad depot, as hereinafter mentioned in this contract, and then through the depot grounds of the Nashville & Chattanooga Railroad to the south end of the southern approach cut of the tunnel, and then alongside of the main track of the Nashville & Chattanooga Railroad, as hereinafter mentioned, to the Nashville & Decatur Railroad depot.

This depot was at the intersection of the Louisville & Nashville Railroad Company's tracks and College street in Nashville, Tenn., and was, also, known as "Linck's depot." Work is now in progress on a new depot, by the Louisville & Nashville Terminal Company, which depot, when finished, will be used by both the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway. The depot is being erected on the south side of Broad street.

**2. Connecting track between trestle of Northwestern branch and Chattanooga depot provided for.**—The Louisville & Nashville Railroad Company agrees to pay for the right of way sufficient for a connecting railroad track, to be built on trestles, and to construct in a first-class manner said trestles, and place thereon first-class railroad iron of fishbar pattern, from the trestle of the Nashville & Northwestern Railroad to the depot ground of the Nashville & Chattanooga Railroad Company; and said trestle and right of way thereafter to be the property of the Nashville & Chattanooga Railroad, and the whole of the trestle and track connecting the Louisville & Nashville Railroad depot with the Nashville & Chattanooga Railroad depot to be kept in good repair at all times by the Nashville & Chattanooga Railroad Company for the uninterrupted use as required by the business of the Louisville & Nashville Railroad Company and the Nashville & Decatur Railroad Company.

**3. Connecting track between Broad street tunnel and Decatur depot provided for.**—The Louisville & Nashville Railroad Company agrees to lay, at its own expense, the Nashville & Chattanooga Railroad Company furnishing and guaranteeing



the right of way for the same, a railroad track from the south end of the southern approach cut of the tunnel on the Nashville & Chattanooga Railroad at Nashville, and upon the present grade of said railroad, to the depot grounds of the Nashville & Decatur Railroad Company, for the exclusive use of the Louisville & Nashville Railroad Company and the Nashville & Decatur Railroad Company, to be kept in repair by the Louisville & Nashville Railroad Company; and the Nashville & Chattanooga Railroad Company covenants that such track may be used as aforesaid during the existence of said company. But, for the present, and until the Nashville & Chattanooga Railroad Company is prepared to offer such right of way, it is understood that the free use of the present track of the Nashville & Chattanooga Railroad, between the south end of the tunnel and the depot of the Nashville & Decatur Railroad, is to be given, instead of a separate track, for the passage of trains belonging to the Nashville & Decatur and the Louisville & Nashville Railroad Company, the running of which, however, is to be subject to the orders of the superintendent of the Nashville & Chattanooga Railroad, but without delay to the business of said railroad companies.

4. **Union depot provided for.**—The Louisville & Nashville Railroad Company agrees to pay toward the erection of a suitable union passenger depot building, on the present depot grounds of the Nashville & Chattanooga Railroad Company, fifty thousand dollars (\$50,000), whenever the Nashville & Chattanooga Railroad Company shall contribute the same amount for said purpose and proceed to erect said depot, the sum of fifty thousand dollars (\$50,000) to be paid by each party as the same may be necessary to be used in payment for the building of said depot, and the Louisville & Nashville Railroad Company and the Nashville & Decatur Railroad Company are to have the free and perpetual and necessary accommodations for their passenger business in and about said depot, without let or hindrance from the Nashville & Chattanooga Railroad Company or other parties to whom the said Nashville & Chattanooga Railroad Company may give the right to use said depot;

and the said Louisville & Nashville Railroad Company shall have the right to select the track in and about said depot, for the use of its passenger trains, in preference to any other company, except the Nashville & Chattanooga Railroad Company, using the depot, and the Nashville & Chattanooga Railroad Company is to keep the depot building, tracks, necessary fixtures, and furniture used for the accommodation of the passenger business, in good repair. The expenses of lighting said building are to be borne equitably by the parties to this contract.

The union depot provided for above will now doubtless never be built, as the Louisville & Nashville Terminal Company is, at this writing, erecting a magnificent depot on the south side of Broad street, which, when finished, will be used by both the Louisville & Nashville Railroad Company and the Nashville, Chattanooga & St. Louis Railway.

**5. Lease not exclusive between Louisville & Nashville Railroad Company depot and Chattanooga depot.**—It is agreed by the parties hereto that the Nashville & Chattanooga Railroad Company may permit other railroad companies to use the connecting trestle and tracks between the Louisville & Nashville Railroad depot and the depot of the Nashville & Chattanooga Railroad Company, and also the union passenger depot, upon terms to be agreed upon between such other companies and the Nashville & Chattanooga Railroad Company; *Provided*, That such permit to use or the use thereof shall not hinder, delay or interfere with the free and prompt transaction of the business of the Louisville & Nashville Railroad Company over said trestle or connecting track and the union passenger depot.

**6. Rental.**—In consideration of the above stipulations, and upon compliance with the same by the Nashville & Chattanooga Railroad Company, the Louisville & Nashville Railroad Company agrees to pay to the Nashville & Chattanooga Railroad Company, eighteen thousand dollars (\$18,000) per annum, in monthly payments of fifteen hundred dollars (\$1,500) from and after the commencement of the use of said connecting track between the depot of the Louisville & Nashville Railroad Company and the depot of the Nashville & Decatur Railroad Company.

7. **Arbitration provided for.**—In the event of any controversy or dispute by the parties as to their rights under it, or as to the performance of the stipulations of this contract, the same is to be settled by arbitration and the decision of three disinterested railroad experts, one to be selected by each party, and the other by the two first selected.

8. **Right of way provided for.**—It is understood that the Nashville & Chattanooga Railroad Company is the legal owner of the Nashville & Northwestern Railroad by purchase. But it is further understood that the Nashville & Chattanooga Railroad Company may (if they elect so to do) furnish the right of way to the Louisville & Nashville Railroad Company to make the above connections, independent of any part of the Nashville & Northwestern Railroad.

In witness whereof, the President of the Nashville & Chattanooga Railroad Company, on the part of that company, and the President of the Louisville & Nashville Railroad Company, on the part of the latter company, have set their hands and the seal of said companies this the first day of May, 1872.

Signed in duplicate,

[SEAL] NASHVILLE & CHATTANOOGA RAILROAD COMPANY,

By E. W. COLE, *President*.

Witness as to signature of E. W. Cole, President,

W. A. GLEAVES,

H. C. CARSON.

[SEAL] LOUISVILLE & NASHVILLE RAILROAD COMPANY,

By H. D. NEWCOMB, *President*.

W. RAMSEY, *Secretary*.

The above lease was properly acknowledged and registered May 8, 1872, in the Register's office of Davidson County, Tennessee, in book 46, page 104.

N., C. & St. L. Ry.	}	<i>Modification agreement as to original lease.</i>
AND		
L. & N. R. R. Co.	}	

**Parties.**—This contract entered into, this first day of July, 1896, between the Nashville, Chattanooga & St. Louis Railway, a corporation created, organized, and existing under the



laws of the state of Tennessee, and hereinafter called the first party, and the Louisville & Nashville Railroad Company, a corporation created, organized, and existing under the laws of the state of Kentucky, and hereinafter called the second party, witnesseth—

This contract modifies the one set out in the page next preceding.

**Preamble.**—WHEREAS, By an agreement, dated the first day of May, 1872, between the Nashville & Chattanooga Railroad Company and the second party, said Nashville & Chattanooga Railroad Company granted and guaranteed to the second party the right of way upon and perpetual use of a railroad track extending from the depot of the second party at College street, Nashville, Tenn., to the depot grounds of the Nashville & Decatur Railroad Company, Nashville, Tenn., in consideration of which, and of the other stipulations of said agreement, the second party agreed to pay the Nashville & Chattanooga Railroad company one thousand five hundred (\$1,500) dollars per month; and,

WHEREAS, Said railroad track, so far as it had not already been constructed, was constructed in the manner provided in said agreement, and has since been used by said second party as provided in said agreement, the second party paying for such use the sum of one thousand five hundred (\$1,500) dollars per month; and,

WHEREAS, the first party is the successor to said Nashville & Chattanooga Railroad Company and has succeeded to all the latter company's rights and liabilities under said agreement; and,

**Lease of Nashville, Chattanooga & St. Louis Railway Company to Louisville & Nashville Terminal Company referred to.**—WHEREAS, the first party has, by a lease dated the 27th day of April, 1896, granted and demised to the Louisville and Nashville Terminal Company certain property in said lease described and embracing all of the aforesaid railroad track lying between Cedar and Spruce streets in said city of Nashville, Tennessee, for the terms and upon the conditions in said lease expressed; and the second party has joined in the said lease

for the purpose of granting and demising to the said Terminal Company all rights and privileges in the said demise property which it, the said second party, was entitled to under the said agreement dated the first day of May, 1872 ; and,

**Lease of Louisville & Nashville Railroad Company to Louisville & Nashville Terminal Company referred to.**—WHEREAS, the second party has, by a lease dated the 27th day of April, 1896, granted and demised to the Louisville & Nashville Terminal Company certain property in said lease described to which the second party has title and which embraces all of the aforesaid railroad track lying between Gay and Cedar streets in said city of Nashville, Tennessee, for the term and upon the conditions in said lease expressed ; and the first party has joined in the said lease for the purpose of granting and demising to the said Terminal Company all rights which it, the said first party, was entitled to under the said agreement of the first day of May, 1872 ; and,

WHEREAS, By reason of said leases to said terminal company, the second party will, during the continuance of said leases and during the continuance of any renewals thereof that may be made as provided therein, have to look to and rely upon said terminal company for the use of all tracks, depots, and other facilities upon all the property so demised and granted as aforesaid by the first party to said terminal company, and by the second party to said terminal company, for all of which the said second party will have to make compensation or pay rent to said terminal company ;

**Former lease suspended in part. Provision for revival, when.**—*Therefore, it is hereby agreed,* That, during the continuance of said leases and of any renewals thereof that may be made as provided therein, the said agreement of the first day of May, 1872, shall be suspended so far as it may in any way apply or relate to any of the property covered by said leases, and the said second party shall cease to pay to the first party the said one thousand five hundred (\$1,500) dollars per month and every part thereof ; but the second party shall continue to have the use of the remainder of the railroad track to which

said agreement of the first day of May, 1872, relates, to wit, the railroad track from College street to Gay street (of which the second party shall have the uninterrupted use) and the railroad track from Spruce street south to the depot grounds of the Nashville & Decatur Railroad Company (of which the second party shall have the exclusive use), in accordance with the said agreement of the first day of May, 1872. And, in consideration of the uninterrupted use of the railroad track from College street to Gay street and of the exclusive use of the railroad track from Spruce street to the depot grounds of the Nashville & Decatur Railroad Company during the continuance of the aforesaid leases of the twenty-seventh day of April, 1896, and of any renewals thereof that may be made as provided therein, the second party hereby agrees that it will, during such time, maintain and keep in good repair and safe condition the said railroad track from College street to Gay street and the said railroad track from Spruce street to the depot grounds of the Nashville & Decatur Railroad Company, in accordance with all state and municipal laws affecting the same, and will pay all taxes and assessments thereon, and will assume and discharge all liabilities that may in any way attach to the first party by reason of the second party's maintenance and operation of said tracks, or by reason of the second party's failure to maintain the same.

Whenever the said leases of the twenty-seventh day of April, 1896, or any renewals thereof that may be made as provided therein, shall be terminated for any cause whatever, or in any manner whatever, then the said agreement of the first day of May, 1872, shall be revived to the extent to which it is hereby suspended, and shall thereafter be of the same force and effect in every particular as it was up to the time of the making of the leases above referred to, dated the twenty-seventh day of April, 1896, or as it was up to the date hereof; and thereafter the first party shall afford to the second party each and every right and facility provided for or secured to the second party in any way whatever in said agreement of the first day of May, 1872, and especially shall afford to the second party the use of a



railroad track from Gay street to Spruce street, at least equal in convenience and all other respects to the track of which the second party has up to this time had the use, under said agreement dated the first day of May, 1872; and whenever said agreement shall again come into full force and effect in every particular, and the first party shall afford the second party all the rights and facilities therein provided for or secured to the second party, the second party shall again pay to the first party compensation at the rate of one thousand five hundred (\$1,500) dollars per month as stipulated for in said agreement, and this contract shall cease and determine. This contract shall be binding upon the successors and assigns of the parties hereto as well as upon the parties hereto themselves.

In witness whereof, the parties hereto have hereunto subscribed their names and affixed their corporate seals, the date first above written, in duplicate originals.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY.

[SEAL.]

By J. W. THOMAS, *President*.

Attest: J. H. AMBROSE, *Secretary*.

LOUISVILLE & NASHVILLE RAILROAD COMPANY.

[SEAL.]

By M. H. SMITH, *President*.

Attest: J. H. ELLIS, *Secretary*.

The above lease was properly signed and acknowledged by both companies, but has not as yet been registered.

## CHAPTER XLIII.

*LEASE OF JOINT USE OF TRACK FROM STEVENSON, ALABAMA,  
TO CHATTANOOGA TO MEMPHIS & CHARLESTON  
RAILROAD COMPANY.*

**Parties.**—THIS AGREEMENT, entered into this first day of October, eighteen hundred and eighty, between the Nashville, Chattanooga & St. Louis Railway, a corporation created and existing under the laws of the states of Kentucky, Tennessee, and Alabama, as party of the first part, the Memphis & Charleston Railroad Company, a corporation created and existing under the laws of the states of Tennessee, Alabama, and Mississippi, as party of the second part, and the east Tennessee, Virginia, and Georgia Railroad Company, a corporation created and existing under the laws of the states of Tennessee, Virginia, and Georgia, as lessee of the railroad of the party of the second part, as party of the third part, witnesseth—

The Memphis & Charleston Railroad Company was sold to the Southern Railway Company February 26, 1898, and is now operated by the latter company.

**1. Consideration; part of road leased; duration of lease; conditions.**—That the contract heretofore made on the twenty-third day of June, 1858, and which would expire on the twenty-third day of June, 1888, between the Nashville & Chattanooga Railroad Company, and the Memphis & Charleston Railroad Company, is hereby abrogated by mutual consent; and that for and in consideration of the sum of Consideration. five thousand dollars (\$5,000) per month to be paid monthly by the party of the second part, the party of the first part hereby leases and demises and guarantees to the Part of road leased. party of the second part, the joint use of their line of railway between Stevenson, Alabama, and Chattanooga, Tennessee, for a period of eight (8) years from the Duration of lease. first day of October, 1880, for the passage of all freight and passenger trains of the Memphis & Charleston

Railroad, running upon schedules to be made by the officers of the Nashville, Chattanooga & St. Louis Railway, allowing not exceeding one hour and forty-five minutes for passenger trains, and four hours for freight trains between those points, unavoidable accidents and delays excepted; the leaving time at Stevenson and Chattanooga to be designated by the proper officers of the Memphis & Charleston Railroad Company. It being understood that the same facilities are to be allowed the trains of the Memphis & Charleston Railroad Company as are allowed trains of the same class of the Nashville, Chattanooga & St. Louis Railway, both as regards speed and rights to main track, whether running on regular schedule or by special orders. Said trains to be run at the expense and risk of the Memphis & Charleston Railroad Company, except for such damages as are caused by fault of the party of the first part, or by the neglect or carelessness of the officers or employes of the Nashville, Chattanooga & St. Louis Railway; the trains of the Memphis & Charleston Railroad Company to be allowed to take water from the water stations between Stevenson and Chattanooga without charge, not including water at the two points named.

2. **Conditions (continued).**—The passenger trains of the party of the second part are to run to the present car shed at Chattanooga, and are to have the right to use any side tracks belonging to the Nashville, Chattanooga & St. Louis Railway necessary in making up said passenger trains, but the freight trains of the Memphis & Charleston Railroad are to pass through the yard of the Nashville, Chattanooga & St. Louis Railway over a connecting track or tracks, with their own track, and to and from any railroad with which the Nashville, Chattanooga & St. Louis Railway tracks connect or may hereafter connect, during the existence of this contract.

3. **Connecting track in Chattanooga to be kept clear.**—It is also agreed that one track connecting with the tracks of the Memphis & Charleston Railroad Company's tracks, and with the tracks of other roads in Chattanooga shall be kept clear for the passage of said trains of the Memphis & Charleston Rail-



road both ways, and no unnecessary delay is to be caused said trains whether they arrive or depart on their schedule time or not.

4. **Main track to be kept in first-class order.**—The Nashville, Chattanooga & St. Louis Railway Company agrees and binds itself to keep their road between Stevenson, Ala., and Chattanooga, Tenn., and at Chattanooga in first-class order.

5. **Employees to be under whose orders.**—The train men of the Memphis & Charleston Railroad Company, while on the joint track between Stevenson and Chattanooga, shall be under the control of the officers of the Nashville, Chattanooga & St. Louis Railway Company so far as the movement of their trains are concerned, and shall be subject to the same rules and regulations as the trainmen of the Nashville, Chattanooga & St. Louis Railway, but are to be paid by the Memphis & Charleston Railroad Company.

6. **Chattanooga terminal facilities provided for.**—The Memphis & Charleston Railroad Company are to furnish their own terminal facilities, yard room, freight and passenger depots at Chattanooga, but they shall have the right to deliver any cars from their line to any mills or factories located in or about the city of Chattanooga on the sidetracks of the Nashville, Chattanooga & St. Louis Railway, or on tracks connecting therewith; also, to receive any cars for their line or connections from such mills or factories.

7. **Local business between Stevenson and Chattanooga provided for.**—It is further understood and agreed between said parties that the Memphis & Charleston Railroad Company shall not do or undertake to do any local business between Stevenson and Chattanooga or to disturb the local business of the Nashville, Chattanooga & St. Louis Railway, that business being conceded to belong to the last named company. The Memphis & Charleston Railroad Company have the right, however, to take freight to local stations on the Nashville, Chattanooga & St. Louis Railway between Stevenson and Chattanooga coming from local stations on its road west of Stevenson, or to receive freight at such stations going to local stations on its road west of Stevenson.

8. **Suits for damages on line of road provided for.**—In case of a suit by a passenger or shipper against the Nashville, Chattanooga & St. Louis Railway, except for damages caused by its own negligence or fault, then it is to be indemnified by the Memphis & Charleston Railroad Company, and in case of suit by a passenger or shipper against the Memphis & Charleston Railroad Company, except for damages caused by its own negligence or fault, then it is to be indemnified by the Nashville, Chattanooga & St. Louis Railway.

9. **Memphis & Charleston Railroad Company to have fees for through mail, when.**—The Memphis & Charleston Railroad Company is to receive from the postoffice department the pay for all through mail carried in their cars from and after the date of this contract.

10. **Agents of the Nashville, Chattanooga & St. Louis Railway to be agents of the Memphis & Charleston Railroad Co. when.**—The agents of the Nashville, Chattanooga & St. Louis Railway at the intermediate stations between Stevenson and Chattanooga shall act as the agents of the Memphis & Charleston Railroad Company for receiving and billing freight and delivering freight to such intermediate stations, and collecting the money and paying the same over to the Memphis & Charleston Railroad Company.

11. **Telegraph wires provided for.**—The Memphis & Charleston Railroad Company shall have the right to erect a telegraph wire on the poles of the Nashville, Chattanooga & St. Louis Railway for its own use, in so far as that company has the right to confer this privilege at present, but it will grant the privilege absolutely after the first day of May, 1882, and in the repairs of said wire the Nashville, Chattanooga & St. Louis Railway will give the same labor and attention that it does to its own wires or to those of the Western Union Telegraph Company running along the line of its road.

12. **Contract transferrable.**—This contract shall be transferrable, and shall be used under the lease of the road of the Memphis & Charleston Railroad Company to the East Tennessee, Virginia & Georgia Railroad Company.

**13. Arbitrators provided-for.**—In case of any misunderstanding as to the intent or meaning of this contract, or the practical workings thereof, the question is to be referred to two (2) arbitrators, one to be selected by each company, and, if necessary, they to select a third, and the decision of such arbitration to be final as between the two companies.

**14. Duration of lease; how terminated.**—This contract shall continue in force for eight (8) years from October 1, 1880, and thereafter until terminated by two years' notice previously given by either party of a desire to terminate it, it being understood that notice may be given at any time on or after six years, so as to terminate the contract on or after the expiration of eight years.

**15. Old lease abrogated.**—The East Tennessee, Virginia & Georgia Railroad Company and the other parties to this contract hereby assent to the annulment or abrogation of the contract of lease made and entered into between the Nashville & Chattanooga Railroad Company and the Memphis & Charleston Railroad Company, bearing date the twenty-third day of June, 1858, and hereby agree to and do substitute this contract of lease for and in the stead of the aforesaid contract of lease, and the East Tennessee, Virginia & Georgia Railroad Company, as lessee of the Memphis & Charleston Railroad, hereby accepts such substitution, with the right to use the same as fully as it heretofore had the right to use the aforesaid contract, which is hereby abrogated and annulled.

In witness whereof the subscribing parties have affixed their respective hand and seal, this twenty-ninth day of September, 1880, in duplicate.

For the NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY CO.,  
J. W. THOMAS, *General Superintendent.*

For the MEMPHIS & CHARLESTON RAILROAD COMPANY,  
R. T. WILSON, *President.*

For the EAST TENNESSEE, VIRGINIA & GEORGIA RAILROAD CO.,  
E. W. COLE, *President.*

JAMES G. MITCHELL, *Secretary.*



1. The foregoing instrument was properly acknowledged by R. T. Wilson and E. W. Cole as president of their respective companies. The board of directors of the Nashville, Chattanooga & St. Louis Railway authorized J. W. Thomas, as general superintendent, to sign and subsequently ratified it September 29, 1880.

2. The Memphis & Charleston Railroad Company was sold to the Southern Railway Company, February 26, 1898, and is now operated by the latter company.

## CHAPTER XLIV.

### *LEASE OF JOINT USE OF TRACK OF WESTERN & ATLANTIC RAILROAD AT DALTON, GA., TO EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY.*

[The East Tennessee, Virginia & Georgia Railway is now owned and operated by the Southern Railway Company.]

**Parties.**—This agreement, entered into this thirty-first day of October, 1891, between the Nashville, Chattanooga & St. Louis Railway, lessee of the Western & Atlantic Railroad, party of the first part, and the East Tennessee, Virginia & Georgia Railway Company, party of the second part, witnesseth:

1. **Description of leased premises; duration of lease.**—That, for and in consideration of payments to be made as hereinafter provided, and other valuable considerations, the first party hereby leases unto the second party the joint use of so much of a track next east of its present passenger station as lies between a switch by which the East Tennessee, Virginia & Georgia Railway connects with it near the west side of Waugh street, in Dalton, Ga., to a point near the north line of Gordon street, being near the southern end of its station grounds at Dalton, at which point is a switch where the East Tennessee, Virginia & Georgia Railway, from the south, connects with it, being shown in blue print herewith with heavy line, said track being about (1,000) one thousand feet long and that now being jointly used by the East Tennessee, Virginia & Georgia Railway Company. Said lease to continue in force for  
**Duration of lease.** five years from November 1, 1891, unless abrogated by the East Tennessee, Virginia & Georgia Railway

Company, by giving six months' notice to the Nashville, Chattanooga & St. Louis Railway.

**2. Consideration; track to be kept in order by, who.**—The East Tennessee, Virginia & Georgia Railway Company agrees, for such joint use of the above mentioned track, to pay to the first party monthly, in due course of business, the sum of two hundred and fifty dollars, it being understood and agreed that such payments of two hundred and fifty dollars shall be in full for the use of the one thousand (1,000) feet of track herein described. The first party is to maintain the track in good condition at its own cost and expense. The track herein leased shall be kept free from standing cars, so as at all times to permit the passage of the second party's trains.

**3. Who to be liable for accidents or damages.**—It is mutually agreed that each party is to be responsible for all claims or damages to its trains, and to property, persons or stock, arising from or in connection with such trains, unless such claims or damages shall arise from the neglect or carelessness of the other party or its employes or agents, in which case the negligent party shall hold the other harmless.

**4. Arbitration provided for.**—In case of any misunderstanding as to the intent or meaning of this contract or its practical workings the question shall be referred to two arbitrators, one to be selected by each company, and if necessary they shall select a third, and the decision of such arbitration shall be final and conclusive as between the two companies.

In witness whereof, the parties hereto, by their proper officers having authority to act, have signed and executed this agreement, in duplicate, on the day and year first above written.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,  
Lessee of Western & Atlantic Railroad.

[SEAL.] J. W. THOMAS, *President*.

Attest: J. H. AMBROSE, *Secretary*.

EAST TENNESSEE, VIRGINIA & GEORGIA RAILWAY COMPANY.

[SEAL.] By HENRY FINK, *Vice President*.

L. M. SCHWAN, *Secretary*.

The East Tennessee, Virginia & Georgia Railway is now owned and operated by the Southern Railway Company.

## CHAPTER XLV.

*LEASE OF JOINT USE OF TRACK BETWEEN WAUHATCHIE & CHATTANOOGA TO ALABAMA GREAT SOUTHERN RAILROAD COMPANY.*

**Parties.**—This agreement entered into the eighteenth day of January, eighteen hundred and eighty-one (1881) by and between the Nashville, Chattanooga & St. Louis Railway, a corporation created and existing under the laws of the states of Kentucky, Tennessee and Alabama, as party of the first part, and the Alabama Great Southern Railroad Company, a corporation created and existing under the laws of the State of Alabama and recognized by the laws of Tennessee, Georgia and Mississippi, as party of the second part, witnesseth:

The Southern Railway Company owns a controlling interest in the stock of the Alabama Great Southern Railroad Company.

**1. Consideration, part of road leased, duration of lease, conditions.**—That for and in consideration of the sum of fourteen thousand four hundred dollars (\$14,400) per annum, to be paid in monthly installments of twelve hundred dollars (\$1,200) each by the party of the second part, the party of the first part hereby leases, demises and guarantees to the

<b>Part of road leased.</b>	party of the second part the joint use of its line of railway between Wauhatchie and Chattanooga, Tennessee, for a period of thirty-three (33) years from the
<b>Expiration of lease.</b>	first day of January, 1881, and until this contract is terminated as hereinafter provided, for the passage of all freight, passenger and other trains of the Alabama Great Southern Railroad Company running upon schedules to be made by the officers of the Nashville, Chattanooga & St. Louis Railway, allowing not exceeding
<b>Conditions.</b>	fifteen (15) minutes for passenger and thirty (30) minutes for freight trains between those points, unavoidable accidents and delays excepted; the leaving time at Wauhatchie



and Chattanooga to be designated by the proper officers of the Alabama Great Southern Railroad Company, the party of the first part having the right to vary this leaving time either way fifteen (15) minutes for passenger trains and thirty (30) minutes for freight trains, it being understood that the same facilities are to be allowed the trains of the Alabama Great Southern Railroad as are allowed trains of the same class of the Nashville, Chattanooga & St. Louis Railway, both as regards speed and rights to main track, whether running on regular schedule or by special orders, and in case a passenger train of the party of the second part and a freight train of the party of the first part are moving in the same direction, the passenger train of the Alabama Great Southern Railroad shall in all cases have preference over the Nashville, Chattanooga & St. Louis Railway freight train. The trains of the party of the second part to be run at the expense and risk of the Alabama Great Southern Railroad Company except for such damages as are caused by fault, default, or negligence of the party of the first part, or by the neglect or carelessness of the officers or employes of the party of the first part.

2. **Conditions (continued).**—The passenger trains of the party of the second part are to run to and from the present union passenger depot at Chattanooga, if so desired by them, the use of the depot, however, to be arranged for with the roads owning the same; and their freight trains to and from the present junction of the Alabama Great Southern Railroad with the main track of the Nashville, Chattanooga & St. Louis Railway in the city of Chattanooga. The trains or engines of the party of the second part to have free ingress or egress to and from all sidetracks that are now, or that may hereafter be, constructed and belong to the party of the first part between Lookout mountain and Montgomery avenue in the city of Chattanooga, for the purpose of delivering freight from and receiving freight destined to points upon the line of the party of the second part; and the trains or engines of the Nashville, Chattanooga & St. Louis Railway to have free access to any or all present or future sidetracks of the party of the second part

in the city of Chattanooga, for the purpose of delivering freight from and receiving freight destined to points upon the line of the party of the first part.

3. **Employees to be under whose instructions.**—The employes of each company shall be under the instructions of the officers of the company upon whose track they may be.

4. **Road to be kept up, by who.**—The Nashville, Chattanooga & St. Louis Railway is to maintain a first-class roadbed between Wauhatchie and Chattanooga in all its essentials; to properly ballast, and keep ballasted, the track; to drain and repair, and keep in repair, the embankments, cuttings, waterways, and river walls, and to renew and maintain all bridges in in the highest state of efficiency; and, when renewals of the present rails are necessary, to relay said track with steel rails weighing not less than fifty-eight (58) pounds per lineal yard. The party of the second part shall have the privilege to make official representation to the party of the first part of any requirement needed to keep the track in the highest state of efficiency, but the Alabama Great Southern Railroad Company shall not in any way be responsible ultimately for the safe condition of said track.

5. **Traffic facilities; block system provided for.**—The party of the first part to provide every facility for the safe and expeditious working of the traffic, and to apply the block system and most approved electrical apparatus within a reasonable time, and make a passing point between Wauhatchie and Lookout Mountain whenever such becomes necessary, subject, however, to the stipulations of this agreement or contract.

7. **Termination of lease provided for.**—It is also agreed and understood that at any time after the first day of January, nineteen hundred and eleven (1911), either party can give three years' notice in writing to terminate this agreement, and in case such notice is given, this contract to continue in force for three years after the giving of such notice by either party.

8. **Signing of lease to conform to by-laws. etc.**—This agreement to be made effectual in accordance with the by-laws and charters of each respective company, if anything of that

kind beyond the below mentioned signing, and sealing be necessary to make this contract effectual.

In witness whereof, the parties hereto have caused these presents to be signed by their respective presidents and secretaries, and their corporate seals to be affixed hereto, this the seventeenth day of February, eighteen hundred and eighty-one.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

[SEAL.]

By JAS. D. PORTER, *President*.

R. C. BRANSFORD, *Secretary*.

The seal of the Alabama Great Southern Railroad Company was hereto affixed this fifteenth day of March, 1881, in the presence of

AUGUSTUS B. AHNHUSER, *President*.

[SEAL.] R. V. TOMLINSON, *Secretary*.

Extract from the minutes of board meeting of the Alabama Great Southern Railroad Company, held the fifteenth day of March, 1881.

Read the agreement in duplicate entered into the fifteenth day of January, 1881, between the Nashville, Chattanooga & St. Louis Railway, of the first part, and the Alabama Great Southern Railroad Company, of the second part, as to the use by the latter company of the track of the Nashville, Chattanooga & St. Louis Railway, between Wauhatchie and Chattanooga, sealed with the seal of the Nashville, Chattanooga & St. Louis Railway, and signed by the president and secretary on the seventeenth of February, 1881, and the agreement having been fully considered.

It was resolved that the seal of this company be affixed to both parts of the said agreement in the presence of the president and the secretary, and that when so executed one part be returned to Mr. Scott together with a copy of this resolution.

[Correct extract.]

R. V. TOMLINSON, *Secretary*.

The Southern Railway Company now owns a controlling interest in the stock of the Alabama Great Southern Railroad Company.



## CHAPTER XLVI.

*LEASE TO SEABOARD AIR LINE BELT RAILROAD COMPANY  
OF TERMINAL FACILITIES AT ATLANTA, GEORGIA, FOR  
ITSELF AND GEORGIA, CAROLINA & NORTHERN  
RAILWAY, AND CONTRACT FOR INTER-  
CHANGE OF BUSINESS BY AND WITH  
NASHVILLE, CHATTANOOGA &  
ST. LOUIS RAILWAY.*

**Parties.**—THIS AGREEMENT, made and entered into the first day of October, A.D. eighteen hundred and ninety-two, between the Nashville, Chattanooga & St. Louis Railway, lessee of the Western & Atlantic Railroad, party of the first part, and the Seaboard Air Line Belt Railroad Company, a corporation duly incorporated and existing under the laws of the state of Georgia, party of the second part: WITNESSETH, that,

**Preamble.**—WHEREAS, The said party of the second part is authorized by its charter or act of incorporation to construct and operate a railroad from a point at or near North Decatur, a station on the Georgia, Carolina and Northern Railway, to a point at or near Howell's, a station on the said Western & Atlantic Railroad, said connection at or near Howell's to be made in such manner as to form what is commonly known as a "Y" track; and,

WHEREAS, The said party of the second part has commenced the construction of said railroad or belt line between the points named; and,

WHEREAS, It is considered for the best interest of both the said party of the first part and the said party of the second part that an agreement should be made to facilitate the doing of business over said railroad and for the interchange of traffic.

**Interchange of business provided for, conditions, duration of contract.**—NOW, THEREFORE, THIS AGREEMENT FURTHER WITNESSETH, That in consideration of the premises and for

the purposes aforesaid, the said Nashville, Chattanooga & St. Louis Railway, lessee of the Western & Atlantic Railroad, party of the first part, covenants and agrees that, upon the completion of said railroad from a point at or near North Decatur, a station on the Georgia, Carolina and Northern Railway, as aforesaid, to a point at or near Howell's, a station on the said Western & Atlantic Railroad, it will, for and during the unexpired term of its lease of the said Western & Atlantic Railroad, to-wit, for a term of twenty-seven (27) years, be the same more or less, interchange business, both through and local, with said Seaboard Air Line Belt Railroad and its connecting lines upon terms as favorable and as advantageous to said road and its connecting lines as those given to any other railroad entering the city of Atlanta.

**Receiving and delivering cars on tracks at Howell's provided for; consideration.**—And the said Nashville, Chattanooga & St. Louis Railway, lessee as aforesaid, further covenants and agrees that it will receive and deliver loaded cars on connecting tracks at Howell's from and to said Seaboard Air Line Belt Railroad Company, or any of its connecting lines of the Seaboard Air Line system, to and from any railroads connecting at Atlanta, which may now or which may be hereafter reached directly, or connect with said Western & Atlantic Railroad, at the rate of two dollars (\$2) per car.

**Joint use of union depot at Atlanta provided for; consideration.**—And the said Nashville, Chattanooga & St. Louis Railway, lessee as aforesaid, further covenants and agrees that, in the event the said Seaboard Air Line Belt Railroad Company should desire and determine to use the union depot in the city of Atlanta for the passenger trains of the Georgia, Carolina & Northern Railway, then and in that event, it shall have the right and privilege of using the tracks of the Western & Atlantic Railroad for that purpose upon paying to said Nashville, Chattanooga & St. Louis Railway, lessee as aforesaid, the sum of twelve thousand five hundred dollars per annum ground rent for the joint use by their passenger trains of the union depot in Atlanta, and, in addition, one thousand dollars

per annum to the roads owning the union depot building, and also their proportion of the operating expenses and maintenance of the depot, to be proportioned as at present divided by the board of control of the union depot, the true intent and meaning of this provision being to give to the said Seaboard Air Line Belt Railroad Company, party of the second part, the right to use said railroad tracks and depot building for the passenger trains of the Georgia, Carolina & Northern Railway, upon the same terms and conditions and upon the same rentals as those now prescribed for and paid by the Georgia Pacific Railway Company for similar privileges, and it is further agreed that should any reduction be made to the Georgia Pacific Railway Company for the use of said privileges, a similar reduction shall be made to the Seaboard Air Line Belt Railroad Company.

**Cleaning and storing of engines and cars provided for; consideration.**—And the said Nashville, Chattanooga & St. Louis Railway, lessee as aforesaid, further covenants and agrees to store and clean the passenger engines and coaches of the said Seaboard Air Line Belt Railroad Company, and those used by it belonging to the Georgia, Carolina & Northern Railway, while laying over at Atlanta, at the rate of one dollar for each engine or coach so stored and cleaned, and charge actual cost for switching, hostling, repairs, supplies, fuel, or water furnished to said engines or coaches.

**Termination of contract in part, provided for.**—And it is mutually understood, covenanted, and agreed that the said Seaboard Air Line Belt Railroad Company is to have the right to terminate and annul this agreement, so far as the same refers to passenger trains, engines, and coaches, upon giving to said Nashville, Chattanooga & St. Louis Railway, lessee as aforesaid, thirty days' notice in writing of its intention so to do.

In witness whereof, the said Nashville, Chattanooga & St. Louis Railway, lessee of the Western & Atlantic Railroad, and the said Seaboard Air Line Belt Railroad Company, have caused these presents to be signed by their respective presidents and their corporate seals to be hereto affixed and attested by



their respective secretaries, the day and year first above written.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

[SEAL.] By J. W. THOMAS, *President*.

Attest: J. H. AMBROSE, *Secretary*.

SEABOARD AIR LINE BELT RAILROAD COMPANY,

[SEAL.] By JNO. H. WINDER, *President*.

Attest: HASSELL THOMAS, *Secretary*.

## CHAPTER XLVII.

### LOUISVILLE AND NASHVILLE TERMINAL COMPANY.

[Union depot and Terminal facilities at Nashville.]

**Property of, how acquired by Nashville, Chattanooga & St. Louis Railway.**—The Louisville & Nashville Terminal Company was chartered March 21, 1893, under the acts of 1893, ch. 11, authorizing the incorporation of companies for the purpose of acquiring, constructing, maintaining, operating or leasing to others, railroad terminal facilities. The charter is fully set out further on in this chapter.

After its organization and the purchase by it of various tracts of real estate (in Nashville, Tenn.,) it leased from the Nashville, Chattanooga & St. Louis Railway, on April 27, 1896, among other things, "all rights of way, railroad tracks and property of every other description which the latter company has in and across Cedar street east of the west line of Belleville street, and all rights of way, railroad tracks and property of every other description which it has in or across Church street and in or across Broad street in Nashville . . . including all rights of way, ways and other easements, all passenger and freight depot buildings, offices, buildings, sheds, warehouses, roundhouses, shops and other buildings, erections and structures, all main and side tracks, switches, crossovers and turnouts and all other terminal facilities now located upon said premises or any part thereof." The lease was for 999

years with privilege of re-leasing for another 999 years. The Louisville & Nashville Railroad Company joined in this lease, as it had certain rights and privileges in the property under an agreement with the Nashville, Chattanooga & St. Louis Railway, dated May 1, 1872, which agreement has heretofore been set out in this compilation on page 533. The lease was registered in the register's office of Davidson county, Tenn., in book 220, p. 175.

On the same day the terminal company leased, among other things, from the Louisville & Nashville Railroad Company, for a like period with similar renewal clause, "all the railroad and right of way on which the same is constructed from the south line of Gay street over the lots above described, and across Pearl and Shankland and Cedar streets to the south line of Cedar street (in Nashville), . . . with the appurtenances thereto belonging, including all rights of way, ways, and other easements." The lease provided that the terminal company should pay all taxes. The Nashville, Chattanooga & St. Louis Railway joined in the lease, as the property conveyed was acquired from it by the terms of the agreement dated May 1, 1872, above referred to. This lease was registered in the register's office of Davidson county, Tenn., in book 221, p. 175, and amended by lease, registered in book 230, p. 106. After the execution of these two leases to it, the terminal company, on June 15, 1896, re-leased the above described property, together with numerous tracts of ground it owned *in fee*, back to the Nashville, Chattanooga & St. Louis Railway and Louisville & Nashville Railroad Company jointly, for a period of 999 years. This lease was registered in the register's office of Davidson county, Tenn., book 222, p. 175, and is fully set out herein in next chapter. The consideration was an annual rental of four per cent. on the actual cost of all expenditures heretofore made or to be hereafter made by the terminal company in the purchase or other acquisition of said premises or property, and in the erection and construction of said improvements and all additions and extensions thereto, and to all taxes, rates, charges, and assessments that may be

levied or imposed during the lease, together with the cost of insurance.

The terminal company is now building the new depot and all terminal facilities contemplated. When completed it will be turned over to the two roads under the terms and conditions provided in the lease above mentioned.

**Mortgage by terminal company.**—After the execution of the two leases by the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad Company to the terminal company, as heretofore set out, the latter company, on May 1, 1896, in order to raise money to construct the proposed depot, freight stations, freight yards, sidetracks, switches, etc., contemplated in the charter, issued a mortgage on its entire property, held both in fee and by lease, to the Manhattan Trust Company to secure an issue of two million dollars fifty-year, four per cent., gold, first mortgage bonds, of the denomination of one thousand dollars each. This mortgage may be found registered in the register's office of Davidson county, Tennessee, book 216, p. 411, and in book 233, p. 334.

## ORIGINAL CHARTER OF THE LOUISVILLE & NASHVILLE TERMINAL COMPANY.

[Chartered under General Acts Tenn., 1875, as amended by Acts 1893, ch. 11. See Shannon's code, § 2429.]

**SECTION 1. Incorporation; name; objects; general powers.**—*Be it known*, That J. W. Thomas, Ed. Baxter, W. G. Hutcheson, M. H. Smith, and M. J. Reedy, all of whom are over twenty-one years of age, are hereby constituted a body politic and corporate by the name and style of the Louisville & Nashville Terminal Company, for the purpose of acquiring, constructing, maintaining, operating, or leasing to others, railroad terminal facilities for the accommodation of railroad passengers and for handling and transferring railroad freight.

**Validity of charter.**—This charter was held to be constitutional by the supreme court of Tennessee in the case of *Ryan v. Louisville & Nash-*



*ville Terminal Company*, decided March 15, 1899, at Nashville. The case has not, at this writing, been published in the Tennessee Reports, but may be found in vol. 50, p. 744, of the Southwestern Reporter, issued May 15, 1899.

**SEC. 2. General powers (continued).**—The general powers of said corporation are: To sue and be sued by the corporate name, to have and use a common seal, which it may alter at pleasure; if no common seal, then the signature of the name of the corporation by any duly authorized officer shall be legal and binding; to purchase and hold or receive by gift, in addition to the personal property owned by said corporation, any real estate necessary for the transaction of the corporate business, and also to purchase or accept any real estate in payment, or part payment, of any debt due to the corporation, and sell realty for corporation purposes; to establish by-laws and make all rules and regulations not inconsistent with the laws and the constitution deemed expedient for the management of corporate affairs; to appoint such subordinate officers and agents, in addition to the president and secretary or treasurer, as the business of the corporation may require; to designate the name of the office and fix the compensation of the officers.

**SEC. 3. Special provisions.**—The following provisions and restrictions are coupled with said grant of powers: A failure to elect officers at the proper time does not dissolve the corporation, but those in office hold until the election or appointment and qualification of their successors. The term of all officers may be fixed by the by-laws of the corporation; the same not, however, to exceed two years. The corporation may, by by-laws, make regulations concerning the subscription for, or transfer of stock; fix upon the amount of capital to be invested in the enterprise; the division of the same into shares; the time required for payment thereof by the subscribers for stock; the amount to be called for at any one time; and in case of failure of any stockholder to pay the amount thus subscribed by him at the time and in the amounts thus called, a right of action shall exist in the corporation to sue said defaulting stockholder for the same.

1. See 3 Hum., 531; 12 Lea, 252; 4 Cold., 101.

2. The capital stock of this company was placed by by-law at \$100,000.

**SEC. 4. Directors, quorum of, books.**—The board of directors, which may consist of five or more members, at the option of the corporation, to be elected either in person or by proxy, by a majority of the votes cast, each share representing one vote, shall keep a full and true record of all their proceedings, and an annual statement of receipts and disbursements shall be copied on the minutes, subject at all times to the inspection of any stockholder. The books of the corporation shall show the original or subsequent stockholders, their respective interests, the amount which has been paid on the shares subscribed, the transfer of stock, by and to whom made; also other transactions in which it is presumed a stockholder or creditor may have an interest.

**SEC. 5. Unpaid Stock.**—The amount of any unpaid stock due from a subscriber to the corporation shall be a fund for the payment of any debts due from the corporation, nor shall the transfer of stock by any subscriber relieve him from payment, unless his transferee has paid up all or any of the balance due on said original subscription.

See 10 Pickle (Tenn.) 154, 608.

**SEC. 6. Express and implied powers.**—By no implication or construction shall the corporation be deemed to possess any powers except those hereby expressly given or necessarily implied from the nature of the business for which the charter is granted, and by no inference whatever shall said corporation possess the power to discount notes or bills, deal in gold or silver coin, issue any evidence of debts as currency, buy and sell any agricultural products, deal in merchandise, or engage in any business outside the purpose of the charter.

**SEC. 7. Charter may be repealed or amended.**—The right is reserved to repeal, annul, or modify this charter. If it is repealed, or if the amendments proposed, being not merely auxiliary but fundamental, are rejected by a vote representing more than half of the stock, the corporation shall continue to exist for the purpose of winding up its affairs, but not to enter upon any new business. If the amendments or modifications, being fundamental, are accepted by the corporation as afore-

said, in a general meeting to be called for that purpose, any minor, married woman, or other person under disability, or any stockholder not agreeing to the acceptance of the modification, shall cease to be a stockholder, and the corporation shall be liable to pay said withdrawing stockholders the par value of their stock, if it is worth so much; if not, then so much as may be its real value in the market on the day of the withdrawal of said stockholders as aforesaid. *Provided*, That the claims of all creditors are to be paid in preference to said withdrawing stockholders.

See discussion under sec. 34 of the charter of the Nashville, Chattanooga & St. Louis Railway, chapter I. herein.

**SEC. 8. Directors, powers, who to compose first board.**—A majority of the board of directors shall constitute a quorum, and shall fill all vacancies until the next election. The first board of directors shall consist of the five or more corporators who shall apply for and obtain the charter.

**SEC. 9. Corporation may borrow money and issue bonds and mortgages, when.**—The said corporation may have the right to borrow money and issue notes or bonds upon the faith of the corporate property, and also to execute a mortgage or mortgages as further security for repayment of money thus borrowed.

**SEC. 10. May condemn land or acquire it how, for corporate purposes, may lease to others.**—And in addition to the above powers said corporation shall have the power to acquire in this or any other state or states, and at such place or places as shall be found expedient, such real estate as may be necessary, on which to construct, operate, and maintain passenger stations, comprising passenger depots, office buildings, sheds and storage yards, and freight stations, comprising freight depots, warehouses, offices and freight yards, roundhouses, and machine shops; also main and side tracks, switches, cross-overs, and turnouts, and other terminal railroad facilities, appurtenances, and accommodations, suitable in size, location, and manner of construction to perform promptly and efficiently the work of receiving, delivering, and transferring all passenger



and freight traffic of railroad companies with which it may enter into contracts for the use of its terminal facilities at such place or places. Said corporation shall have the power, by purchase, lease, or assignment of lease, to acquire and hold, and to lease to others, such real estate as may be necessary for the above mentioned purposes of its corporation; and it may also acquire such real estate by condemnation, in pursuance of the general law authorizing the condemnation of private property for works of internal improvement, as set forth in sections 1325 to 1348 both inclusive of the code of 1858, which are as follows, viz:

**SEC. 11. (1325) Land may be taken, how.**—[This section together with succeeding sections of this charter up to and including section 34, are the same as sections 10, to and including section 33 of the charter of the Decatur, Chesapeake & New Orleans Railway Company, which are fully set out on page 416 to 421 of this compilation. For economy of space they will not again be copied.]

**Validity of charter.**—This charter held constitutional in case of *Ryan v. Louisville & Nashville Terminal Company*, by supreme court of Tennessee, March 15, 1899. Reported in *Southwestern Reporter*, vol. 50, p. 744.

**SEC. 35. May construct tracks or depots across, under, or over streets and alleys of cities and towns, when and how.**—Whenever it may be necessary, in order to enable said corporation to acquire and construct proper railroad terminal facilities in any town or city, or to connect such facilities with the tracks of any railroad company with whom said corporation may have contracted to furnish such facilities, said corporation, with the consent of the proper authorities of such town or city, shall have the right to lay and operate a track or tracks across or along, or over or under, such of the streets or alleys of such town or city as may be necessary for that purpose. And said corporation may, also, with such consent, construct such passenger or freight depots, or stations, across or along, over or under any such street or alley, when it shall be necessary, in order to furnish proper railroad terminal facilities in said town or city; but no street or alley of any town or city shall

be obstructed or interfered with until the consent of the proper authorities of said town or city shall have been first obtained.

**SEC. 36. May borrow money, issue bonds and mortgages, when.**—Said corporation may, from time to time, borrow such sums of money as may be necessary for the acquisition, construction, maintenance, repair, or operation of such passenger or freight depots, or stations, and other terminal facilities as are above mentioned, and to issue and dispose of its bonds for such amounts and at such prices as it may think proper, and to mortgage its corporate property, rights, privileges, and franchises for the purpose of securing the same.

**SEC. 37. May keep hotel, restaurant, and news stands, where.**—At any place where said railroad terminal corporation may acquire and construct passenger stations, said corporation may keep on said premises a hotel or restaurant, or both, and also a news stand.

**SEC. 38. May lease its property to railroad company, when.**—The said corporation may lease to any railroad company or railroad companies its freight and passenger depots, or stations, and its other terminal facilities, located at any place where the line or lines of said railroad company or companies may terminate, or through which they may pass; and such lease may be upon such terms and for such time as may be agreed upon by the parties.

**SEC. 39. Such railroad companies may guarantee bonds or contracts of terminal company, when.**—Said railroad company or companies may severally or jointly, or jointly and severally, guarantee the principal and interest of such bonds as may be issued by said railroad terminal corporation, and may, in like manner, guarantee the performance of any other contract that said railroad terminal corporation may make in regard to its corporate business.

**SEC. 40. Each may subscribe, hold, and dispose of stock or bonds in other, when; charter amendable.**—Any such railroad company or companies may also subscribe, hold, and dispose of the capital stock or bonds which may be issued by said railroad terminal corporation, and said railroad terminal corpora-

tion may acquire, hold, and dispose of the capital stock or bonds of railroad companies, or of other terminal companies, for the purpose alone of raising money for the acquisition, construction, maintenance, and repair of such passenger and freight depots and stations, and other terminal facilities as above mentioned, and not for the purpose of speculating in stocks or bonds, or managing or controlling railroads. The right is reserved to repeal, amend, or modify this charter.

We, the undersigned, apply to the state of Tennessee, by virtue of the laws of the land, for a charter of incorporation for the purposes and with the powers, etc., declared in the foregoing instrument.

Witness our hands, this twenty-first day of March, A.D., 1893.

J. W. THOMAS,  
ED. BAXTER,  
W. G. HUTCHESON,  
M. H. SMITH,  
M. J. REEDY.

1. **Acknowledgment.**—The foregoing charter was properly signed and acknowledged before W. T. Smith, clerk of county court of Davidson county, Tenn., March 21, 1893.

2. **Where registered.**—The charter was properly registered in charter book No. 130, p. 363-368, of Davidson county, Tenn., March 21, 1893; and in the secretary of state's office March 22, 1893, in book "SS," p. 478; the secretary's certificate, with *fac simile* of great seal of the state of Tennessee was registered in Davidson county, in book 130, p. 368.



## CHAPTER XLVIII.

*LEASE FROM LOUISVILLE & NASHVILLE TERMINAL COMPANY  
TO NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY  
AND LOUISVILLE & NASHVILLE RAILROAD COM-  
PANY, OF TERMINAL FACILITIES, PROP-  
ERTY, ETC., AT NASHVILLE.*

**LEASE.**

**Parties.**—This indenture, made this fifteenth day of June, 1896, by and between the Louisville & Nashville Terminal Company, a corporation chartered, organized, and existing under the laws of the State of Tennessee, and known hereinafter as the first party, and the Louisville & Nashville Railroad Company, a corporation chartered, organized and existing under the laws of the Commonwealth of Kentucky, with a right of way granted by the State of Tennessee, to construct and operate a railroad in said State of Tennessee, and the Nashville, Chattanooga & St. Louis Railway, a corporation chartered, organized, and existing under the laws of the State of Tennessee, said two last named railroad or railway companies being known hereinafter as the second parties, WITNESSETH:

ARTICLE 1. That said first party hath letten, and by these presents doth grant, demise, and to farm let, unto said second parties and their respective successors and assigns, the following pieces or parcels of land situated in the city of Nashville, county of Davidson, and State of Tennessee, and bounded and described as follows, viz:

## I.

1. **Description real estate leased.**—All of lots numbers four (4) and five (5) in the Gleaves plan of lots, as recorded in book 21, page 29, register's office of Davidson county, said lots fronting ninety feet on the north side of Gleaves street, and extending northwardly between parallel lines, one hundred and forty-nine (149) feet more or less to an alley, they being the same conveyed to E. C. Lewis, agent, by M. L. Hoyte, by deed dated November 26, 1890, and recorded in book 164, page 192, register's office of Davidson county.

2. All of lots Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, and 25 in said Gleaves plan of lots, said lots fronting each 25 feet on the north side of Gleaves street, and running back at right angles to said street, and between parallel lines 145 feet to an alley, said lots being the same conveyed to E. C. Lewis by Minnie Gleaves by deed, dated May 16, 1888, and registered in book 113, page 72, register's office of Davidson county.

3. All of lot No. 16 and the north 10 feet of lot No. 17 in Lunatic Asylum plan of lots, as registered in book No. 21, page 117, register's office of Davidson county, said lot No. 16 and part of lot No. 17 fronting 60 feet on the east side of Magazine street, and running back eastwardly between parallel lines with the south line of Griffin street 150½ feet to a 20-foot alley, the north 30 feet of said lot No. 16 being the same conveyed to E. C. Lewis by William Graves and wife and W. W. Tucker and wife, by deed, dated September 18, 1890, registered in book 158, page 316, register's office of Davidson county, and the south 20 feet of lot No. 16 and the north 10 feet of lot No. 17 being the same conveyed to said Lewis by Mary M. Tucker and husband, by deed, dated February 15, 1896, and registered in book 208, page 153, register's office of Davidson county.

4. All of lots Nos. 20, 21, and 24. in said Lunatic Asylum plan, said lots being the same sold by the state of Tennessee, and bought by E. C. Lewis of Murray & Reagan, through their trustee, S. N. Henderson, of J. W. Bass and of George K. Whitworth, clerk and master, in the order and number of lots named, said lots fronting each 50 feet on the east side of Magazine street, and running back between parallel lines 150 feet, more or less, to Overton street.

5. All of lot No. 22 in said Lunatic Asylum plan, said lot fronting 50 feet on the west side of Magazine street, and extending westwardly between parallel lines 150½ feet to a 10-foot alley, it being the same conveyed to E. C. Lewis by J. S. Cobb and wife, by deed, dated September 25, 1891, registered in book 157, page 583, register's office of Davidson county.

6. All of lot No. 12 in said Lunatic Asylum plan, said lot fronting 50 feet on the east side of Kayne avenue and running back between parallel lines 150 feet to a 10-foot alley, it being the same conveyed to said E. C. Lewis by John S. Arbuthnot and wife, by deed, dated April 5, 1888, registered in book 158, page 477, register's office of Davidson county.

7. All of lot No. 253 in McNairy's addition to the city of Nashville, as per plan recorded in book 9, page 323, register's office of Davidson county, said lot fronting 50 feet on the north side of Laurel street, and extending northwardly between parallel lines 170 feet to an alley, it being the same conveyed to said E. C. Lewis by J. W. Barnes, by deed, dated April 3, 1889, registered in book 162, page 17, register's office of Davidson county.

8. All of lot No. 255 and 5 feet off the west side of lot No. 254 in said McNairy's addition to the city of Nashville, said parcel of land fronting

55 feet on the north side of Laurel street, and extending northwardly between parallel lines 170 feet to an alley, it being the same conveyed to said E. C. Lewis by Mary Stevenson and husband, by deed, dated August 12, 1890, registered in book 158, page 205, register's office of Davidson county.

9. All of lots Nos. 146, 148, and 152 in said McNairy's addition, each fronting 50 feet on the south side of Demonbreun street, and extending southwardly between parallel lines 175 feet to an alley. lot No. 146 being the same conveyed to said E. C. Lewis by J. W. Simmons, by deed, dated January 20, 1890, registered in book 159, page 225, register's office of Davidson county; lot No. 148 being the same conveyed to said E. C. Lewis by John Kirkman, trustee of Catherine H. Pritchett, by deed, dated June 1, 1888, registered in book 208, page 425, register's office of Davidson county; lot No. 152 being the same conveyed to said E. C. Lewis by John W. Simmons, by deed, registered in book 159, page 530, register's office of Davidson county.

10. All of lots Nos. 149, 151, and 153 of said McNairy's addition to the city of Nashville, each fronting 50 feet on the north side of Demonbreun street, and extending northwardly between parallel lines 166 feet to an alley; lot No. 149 being the same conveyed to said Lewis by Mrs. Ann Forde, Robert A. Forde, Helen Forde, Stille F. Forde, M. Forde, and H. W. Forde, by deed dated February 9, 1888, registered in book 158, page 260, register's office of Davidson county; lot No. 151 being the same conveyed to said Lewis by J. J. Freeman and wife by deed dated February 23, 1888, registered in book 159, page 108, register's office of Davidson county; lot No. 153 being the same conveyed to said Lewis by S. A. Cunningham by deed dated April 2, 1888, registered in book 117, page 258, register's office of Davidson county.

11. All of lots Nos. 82 and 84 in said McNairy's addition to the city of Nashville, each of said lots fronting 50 feet on the north side of McGavock street, and extending northwardly between parallel lines 169 feet to an alley; lot No. 82 being the same conveyed to said Lewis by William P. Watson by deed dated March 27, 1888, registered in book 159, page 108, register's office of Davidson county; lot No. 84 being the same conveyed to said Lewis by J. T. Rundle and wife by deed dated February 29, 1888, registered in book 159, page 12, register's office of Davidson county.

12. All of lots Nos. 7, 8, 10, and 12 of said McNairy's addition to the city of Nashville, each fronting 50 feet on the south side of Broad street, and extending southwardly between parallel lines 169 feet to an alley; lot No. 7 being the same conveyed to said Lewis by Peter McMeekin and wife by deed dated December 31, 1892, registered in book 208, page 427, register's office of Davidson county; lot No. 8 being the same conveyed to said Lewis by Valentine Steinhauer and wife by deed dated April 6, 1889, registered in book 159, page 203, register's office of Davidson county; lot No. 10 being the same conveyed to said Lewis by Rebecca G. Lindsay and husband by deed dated March 28, 1889, registered in book 158, page 533, register's office of Davidson county; and lot No. 12 being



the same conveyed to said Lewis by A. W. Harris, trustee of Catherine H. Pritchett and husband, by deed dated September 16, 1891, and registered in book 203, page 423, register's office of Davidson county.

13. All of lots Nos. 208 and 209 of said McNairy's addition to the city of Nashville, each fronting 50 feet on the south side of Porter street, and extending southwardly between parallel lines 175 feet to an alley, they being the same conveyed to said Lewis by S. A. Cunningham, John A. Payne, and L. D. Palmer, by deed dated September 10, 1890, registered in book 156, page 581, register's office of Davidson county.

14. A lot or parcel of land, being a part of lot No. 124 in Hynes' addition to the city of Nashville, a plan of which is recorded in the office of the clerk and master of the chancery court at Nashville, Tenn., minute book "B," page 85, to which special reference is hereby made; said lot or parcel of land fronting  $39\frac{1}{2}$  feet on the east line of McCreary street, measured northwardly from the north line of Grundy street, the width of said parcel of land in the rear being  $35\frac{1}{2}$  feet, measured northwardly from said north line of Grundy street, the depth of said lot or parcel of land, measured through the center thereof, being 145 feet; it being the same conveyed to E. C. Lewis by C. C. Christopher by deed dated June 25, 1892, registered in book No. 185, page 92, register's office of Davidson county.

15. All of lots Nos. 122 and 123 in said Hynes' addition to the city of Nashville, said lots fronting each 79 feet on the east side of McCreary street, beginning on the east side of said street 140 feet from the south line of Church street; thence extending southwardly along the east side of McCreary street 158 feet, more or less; thence eastwardly 145 feet to the rear line of said lots; thence northwardly 152 feet to the southeast corner of lot No. 120; thence westwardly along the south line of lots 120 and 121, 145 feet, to the point of beginning; being the same lots conveyed to E. C. Lewis by S. M. Douglas and wife by deed dated January 20, 1891, registered in book No. 208, page 422, register's office of Davidson county.

16. A lot or parcel of land, bounded and described as follows: Beginning at the southeast corner of Cedar and Walnut streets, thence extending in a southerly direction with the east line of Walnut street  $121\frac{3}{4}$  feet; thence eastwardly, parallel with the south line of Cedar street, 130 feet; thence northwardly, parallel with the east line of Walnut street,  $121\frac{3}{4}$  feet to the south line of Cedar street; thence with the south line of Cedar street westwardly 130 feet to the point of beginning; the west 30 feet of said tract fronting  $121\frac{3}{4}$  feet on the east line of Walnut street, being the same conveyed to E. C. Lewis by Andrew Jackson, by deed dated March 4, 1890, registered in book 208, page 420, register's office of Davidson county; the remainder of said tract fronting 100 feet on the south side of Cedar street, and extending southwardly  $121\frac{3}{4}$  feet, being the same conveyed to said Lewis by R. L. Weakley by deed dated March 8, 1890, registered in book 159, page 529, register's office of Davidson county.

17. Two tracts or parcels of land, bounded and described as follows: The first beginning at a point on the north side of Cedar street, southeast corner of the land owned by John Corcoran's heirs, said corner being 71.6 feet more or less east of the east line of Belleville street; thence extending in an easterly direction with the north line of Cedar street 66½ feet to an iron post, southwest corner of the land purchased by the Louisville & Nashville Railroad Company from B. B. Leake, by deed dated the sixth day of June, 1872; thence in a northerly direction with the west line of said railroad company's property 270 feet to the south line of Shankland street; thence in a westerly direction with the south line of Shankland street 35 feet; thence in a southerly direction parallel with said railroad company's west line, 120 feet; thence in a westerly direction parallel with the north line of Cedar street 31½ feet to the northeast corner of land belonging to the John Corcoran heirs; thence in a southerly direction parallel with said railroad company's west line, 150 feet to the point of beginning.

The second beginning at a point on the north line of Cedar street, southwest corner of lot belonging to Sarah Crahan; thence extending in a northerly direction with the west line of the lot of said Sarah Crahan 270 feet to the south line of Shankland street; thence in a westerly direction with the south line of Shankland street 88 feet, more or less, to the east line of the land purchased by the Louisville & Nashville Railroad Company from B. B. Leake, by deed, dated sixth day of June, 1872; thence in a southerly direction with the east line of said railroad company's land 90 feet to the north line of the land purchased by J. W. Thomas, agent, from Michael Quinn and wife, by deed, dated the twenty-first day of September, 1886; thence in an easterly direction with the north line of said lot 29 feet, more or less, to the northeast corner of the same; thence in a southerly direction with the east line of said lot 180 feet, more or less, to the north line of Cedar street; thence in an easterly direction with the north line of Cedar street; thence in an easterly direction with the north line of Cedar street 59 feet, more or less, to the point of beginning; said two tracts being the same conveyed to E. C. Lewis by Andrew Jackson, by deed, dated March 4, 1890, registered in book 208, page 420, register's office of Davidson county.

Being all the pieces or parcels of land, with their appurtenances, which were conveyed to the terminal company by E. C. Lewis and Pauline D. Lewis, his wife, by deed, dated the thirty-first day of March, 1896, registered in book 207, page 481, register's office of Davidson county.

## II.

1. **Description of real estate leased (continued).**—All of lots Nos. 81 and 83 in McNairy's addition to the city of Nashville, each fronting 50 feet on the south side of McGavock street and extending southwardly between parallel lines 166 feet to an alley; also all of lots 145 and 147 in said addition, each fronting 50 feet on the north side of Demonbreun street, and extending northwardly between parallel lines 166 feet to an

alley; also a triangular-shaped tract of land, composed of lots Nos. 294, 295, 296, and 329 in said McNairy's addition to the city of Nashville, said tract fronting 208 feet on the south side of Laurel street and extending southwardly to Kayne avenue, the west line of said tract being parallel with McNairy street, said lots or parcels of land being the same conveyed to J. W. Thomas, agent, by Alfred Kayne, by deed, dated August 14, 1890, registered in book 195, page 272, register's office of Davidson county.

2. All of lot No. 143 in McNairy's addition to the city of Nashville, fronting 50 feet on the north side of Demonbreun street, and extending northwardly between parallel lines 166 feet to an alley; also, an irregular tract of land composed of lots 250 and 251 in said addition, bounded and described as follows: Beginning at a point on the north line of Laurel street, at the boundary line between lots 251 and 252, thence extending in a northerly direction, with said boundary line, 170 feet to an alley; thence in an easterly direction, with the south line of said alley, 120 feet, more or less, to the west line of Kayne avenue; thence in a southerly direction, with the west line of Kayne avenue, to the north line of Laurel street; thence in a westerly direction, with the north line of Laurel street, to the point of beginning; said lots or parcels of land being the same conveyed to J. W. Thomas, agent, by Alfred Kayne by deed dated July 8, 1890, registered in book 196, page 232, register's office of Davidson county.

3. All of lot No. 150 in McNairy's addition to the city of Nashville, fronting 50 feet on the south side of Demonbreun street, and extending southwardly between parallel lines 175 feet to an alley, it being the same conveyed to J. W. Thomas, agent, by Alfred Kayne by deed dated September 13, 1890, and registered in book 196, page 234, register's office of Davidson county.

4. All of lot No. 13 in McNairy's addition to the city of Nashville, fronting 50 feet on the north side of Broad street, and extending northwardly between parallel lines 175 feet, more or less, to an alley, it being the same conveyed to J. W. Thomas, agent, by the McGavock & Mt. Vernon Horse Railroad Company by deed dated October 30, 1890, registered in book 195, page 266, register's office of Davidson county.

5. All of lots Nos. 2 and 3 in J. E. Gleaves' addition to the city of Nashville, as recorded at page 116, plan book of the chancery court at Nashville, Tennessee, and at page 29 of book 21, register's office of Davidson county; said lot No. 2 fronting 180 feet, more or less, on the north side of Gleaves street, and lot No. 3 fronting 50 feet on the same side of said street, and adjoining said lot No. 2 on the west, both lots running back northwardly to the line of the Nashville, Chattanooga & St. Louis Railway's land, and are of irregular depths, they being the same conveyed to J. W. Thomas, agent, by Minnie Gleaves by deed dated February 5, 1886, registered in book 93, page 329, register's office of Davidson county.

6. All of the tract of land known as lot No. 142, of McNairy's addition to the city of Nashville, as it appears of record in the register's office of



Davidson county, book 9, page 328, bounded and described as follows: Beginning at the intersection of the south line of Demonbreun street, with what was originally the west line of the Middle Franklin turnpike, running thence westwardly with the south line of Demonbreun street 148 feet; thence southwardly, parallel with McNairy street, 175 feet to an alley; thence eastwardly along said alley 32 feet to what was originally the west line of said Middle Franklin turnpike; thence northwardly with what was originally the west line of said turnpike, to the point of beginning; it being the same tract or parcel of land conveyed to said J. W. Thomas, agent, by E. C. Lewis, by deed registered in book 83, page 428, register's office of Davidson county.

7. All of lots 139 and 140, in McNairy's addition to the city of Nashville, each fronting 50 feet on the north side of Demonbreun street, and extending northwardly between parallel lines to an alley; also all of lot No. 67 in said addition, fronting 50 feet on the south line of McGavock street, and extending southwardly between parallel lines to an alley, said lots being the same conveyed to J. W. Thomas, by Amanda J. Porter, by deed dated November 2, 1881, registered in book 175, page 145, register's office of Davidson county.

8. All of lot No. 141, in McNairy's addition to the city of Nashville, fronting 50 feet on the north side of Demonbreun street, and extending northwardly between parallel lines 166 feet to an alley, it being the same conveyed to J. W. Thomas, agent, by Henry Blackburn et al., by deed dated April, 1884, registered in book 83, page 582, register's office of Davidson county.

9. All of lots Nos. 75, 77, and 79, in McNairy's addition to the city of Nashville, each fronting 50 feet on the south side of McGavock street, and extending southwardly between parallel lines 166 feet to an alley; also lot No. 78 in said addition, fronting 50 feet on the north side of McGavock street, extending northwardly between parallel lines to an alley; also lot No. 4 in said addition, fronting 50 feet on the south line of Broad street, and extending southwardly between parallel lines to an alley; said lot No. 75 being the same conveyed to J. W. Thomas, agent, by Theo. Robertson and wife, by deed dated November 21, 1882, and registered in book 75, page 619, register's office of Davidson county; said lots 4, 77, and 78, being the same conveyed to said J. W. Thomas by Amanda J. Porter by deed dated January 3, 1882, registered in book 71, page 268; lot 79, being the same conveyed to said J. W. Thomas, agent, by Norman Kirkman by deed dated April 14, 1884, registered in book 83, page 585, register's office of Davidson county.

10. All of lots Nos. 66, 68, 70, 72, 74, and 76 of McNairy's addition to the city of Nashville, each fronting 50 feet on the north side of McGavock street, and extending northwardly between parallel lines to an alley; lots 66, 68, and 70 being the same conveyed to J. W. Thomas by David Grewar and wife and Nora Moore, by deed, dated November 7, 1881, registered in book 70, page 511, and by deed to J. W. Thomas from J. N. Bertheol and wife, by deed, dated December 14, 1881, registered in book 71, page 140, and by deed to J. W. Thomas, agent, from Catherine de la

Hay, by deed, dated April, 1882, and registered in book 72, page 299, and to J. W. Thomas by Robert Ewing, clerk and master, by deed, dated June 15, 1882, registered in book 74, page 302, register's office of Davidson county; lots 72 and 74 being the same conveyed to J. W. Thomas, agent, by T. W. Wrenne, clerk and master, by deed, dated March 10, 1884, registered in book 83, page 284, register's office of Davidson county, and lot No. 76 being the same conveyed to said J. W. Thomas, agent, by Thomas W. Wrenne, clerk and master, by deed, dated January 13, 1885, registered in book 87, p. 122, register's office of Davidson county.

11. Lots 1, 2, 3, 5, and 6 in McNairy's addition to the city of Nashville, each fronting 50 feet on the south side of Broad street, and extending southwardly between parallel lines 175 feet to an alley; lot No. 1 being the same conveyed to J. W. Thomas by H. H. Smith and wife, by deed, dated December 14, 1881, registered in book 71, page 141, register's office of Davidson county; lots 2 and 3 being the same conveyed to J. W. Thomas by the Nashville Commercial Insurance Company, by deed, dated October 28, 1881, and recorded in book 70, page 459, register's office of Davidson county; lots Nos. 5 and 6 being the same conveyed to J. W. Thomas, agent, by A. B. Tavel, by deed, dated April 9, 1884, registered in book 83, page 584, register's office of Davidson county.

12. A tract or parcel of land situated in Hines' addition to the city of Nashville, bounded and described as follows: Beginning at a point on the east line of McCreary street 235 feet north of the north line of Church street; thence extending in a northerly direction with the east line of McCreary street 250 feet; thence eastwardly 145 feet; thence southwardly, parallel with McCreary street, 250 feet; thence westwardly 145 feet to the point of beginning. The south 50 feet of said tract being the same conveyed to J. W. Thomas, agent, by Lewis P. Holmes, by deed registered in book 149, page 559, register's office of Davidson county; the adjoining 50 feet on the north being the same conveyed to J. W. Thomas, agent, by Thomas S. Weaver, clerk and master, and R. W. Turner, by deed dated February 28, 1896, and registered in book 208, page 200, register's office of Davidson county; the remainder of said tract being the same conveyed to J. W. Thomas, agent, by B. F. Lester, by deed dated September 18, 1891, registered in book 11, page 368, register's office of Davidson County.

13. A lot or parcel of land, being portions of lots 26 and 27 of John Cockrell's subdivision of Academy out-lot, as subdivided and sold by the chancery court of Franklin, Tennessee, after his death, bounded and described as follows: Beginning at a point on the north line of Cedar street 40 feet west of the southeast corner of lot 26; thence running northwardly, parallel with Bellville street, 180 feet; thence eastwardly, parallel with Cedar street, 40 feet; thence southwardly, parallel with Bellville street, 180 feet to the north line of Cedar street; thence westwardly with the north line of Cedar street to the point of beginning; said tract being the same conveyed to J. W. Thomas, agent, by Michael Quinn and wife, by deed dated September 21, 1886, registered in book 96, page 438, register's office of Davidson county. Being all the pieces or parcels of

land, with their appurtenances, which were conveyed to the terminal company by John W. Thomas, agent, and John W. Thomas and Evalena DeBow Thomas, his wife, by deed dated the 27th day of March, 1896, registered in book 207, page 487, register's office of Davidson county.

### III.

1. **Description of real estate leased (continued).**—Lot No. 206, in McNairy's addition to the city of Nashville, as shown by plan recorded in book 9, page 323, register's office of Davidson county, said lot fronting 100 feet, more or less, on the south side of Grundy street, and extending southwardly between parallel lines to Porter street, it being the same conveyed to M. H. Smith, agent, by the Cumberland Electric Light and Power Company, by deed dated December 5, 1894, and registered in book 195, page 269, register's office of Davidson county.

2. A lot or parcel of land, being a portion of the Fairfax estate, and bounded and described as follows: Beginning at a point on the south line of Cedar street, 463 feet eastwardly from the east line of McCreary street, said beginning point being the northwest corner of the property belonging to the Nashville, Chattanooga & St. Louis Railway, thence running westwardly along the south line of Cedar street  $321\frac{1}{4}$  feet; thence in a southerly direction parallel with McCreary street, 140 feet to an alley; thence in an easterly direction with said alley  $83\frac{3}{4}$  feet to the east line of Hynes' addition to the city of Nashville; thence southwardly with the east line of said Hynes' addition 524 feet more or less, to the southeast corner of lot 114 in said addition, better known as the "Church lot;" thence eastwardly 165.4 feet to the west line of the property of the Nashville, Chattanooga & St. Louis Railway, thence northwardly with said west line  $463\frac{1}{4}$  feet to the point of beginning.

3. A lot or parcel of land beginning at a point on the south line of Cedar street,  $111\frac{1}{4}$  feet eastwardly from the east line of McCreary street; thence extending in a westerly direction with the south line of Cedar street  $61\frac{1}{4}$  feet; thence in a southerly direction parallel with McCreary street 140 feet to an alley; thence eastwardly with said alley  $61\frac{1}{4}$  feet; thence northwardly parallel with McCreary street 140 feet to the point of beginning; said lot of land, Nos. 2 and 3, being the same conveyed to the said M. H. Smith by Mattie F. Lusk, by deed, dated March 23, 1893, registered in book 208, page 418, register's office of Davidson county.

4. A lot or parcel of land, being a part of lots Nos. 8 and 7 in Hynes' addition to the city of Nashville, plan of which is recorded in book No. 1 of the chancery court of Davidson county, page 21, and in minute book "B," page 85, of said court. Said lot, more particularly described, begins at the northwest corner of lot No. 8, the intersection of the east line of McCreary street with the south line of a 20-foot alley, said northwest corner also being 140 feet northwardly from the north line of Hynes street; thence running in an easterly direction along the south line of said alley 100 feet to a point in the north boundary line of lot No. 7 in said Hynes' addition; thence parallel with McCreary street south-



wardly 40 feet, thence in a westerly direction parallel with said alley 100 feet to the east line of McCreary street, thence in a northerly direction with the east line of McCreary street 40 feet to the place of beginning; said lot or parcel of land being the same conveyed to said M. H. Smith by Mary Ryan, by deed, dated May 25, 1893, registered in book 181, page 199, register's office of Davidson county.

5. A lot or parcel of land fronting 80 feet, more or less, on the north line of Pearl street, bounded on the west by the line of Pat Cummins, on the east by the land of the Louisville & Nashville Railroad Company, upon which a trestle is situated, and on the north by a 10-foot alley, it being the same conveyed to said M. H. Smith, agent, by E. J. Plummer and wife, by deed dated May 3, 1893, registered in book No. 179, page 291, register's office of Davidson county.

6. A lot or parcel of land, being the western 15 feet of lot No. 5, and all of lot No. 7 in the B. M. Barnes plan, fronting  $45\frac{1}{2}$  feet on the south side of Gay street, and extending southwardly, between parallel lines,  $96\frac{1}{2}$  feet to an alley, it being the same conveyed to M. H. Smith, agent, by M. Whitfield and wife, by deed dated May 8, 1893, registered in book No. 178, page 409, register's office of Davidson county.

7. The south  $37\frac{1}{2}$  feet of lot No. 19 in the Lunatic Asylum subdivision of the city of Nashville, fronting  $37\frac{1}{2}$  feet on the west side of Magazine street, and extending westwardly between parallel lines 150 feet to an alley, it being the same conveyed to M. H. Smith, agent, by Robert Rodes and wife, by deed dated 4th day of February, 1894, and registered in book No. 186, page 415, register's office of Davidson county. Being all of the pieces or parcels of land, with their appurtenances, which were conveyed to the terminal company by M. H. Smith and Annette Smith, his wife, by deed dated the 25th day of March, 1896, registered in book 207, page 493, register's office of Davidson county.

#### IV.

1. **Description of real estate leased (continued).**—All of lot No. 26 in the Lunatic Asylum plan of lots in Nashville, Tenn., registered in book 21, page 117, register's office of Davidson county, to which reference is hereby made; said lot fronting 50 feet on the west side of Magazine street, and extending westwardly between parallel lines  $150\frac{1}{2}$  feet to an alley, it being the same conveyed to G. Stritch by Nannie E. Portwood by deed dated September 23, 1890, registered in book 146, page 478, register's office of Davidson county.

2. All of that part of lot No. 254 in McNairy's addition to the city of Nashville bounded and described as follows: Beginning at a point in the north line of Laurel street and on the division line between lots 253 and 254 in said addition; thence extending in a westerly direction, with the north line of Laurel street, 45 feet; thence northwardly, parallel with said division line, 170 feet to an alley; thence eastwardly, with said alley, 45 feet to said division line; thence southwardly, with said division line, 170 feet to the point of beginning; it being the same con-

veyed to said G. Stritch by James Powers and wife by deed dated November 19, 1889, registered in book 157, page 540, register's office of Davidson county. Being all the pieces or parcels of land, with their appurtenances, which were conveyed to the terminal company by G. Stritch and Katie Stritch, his wife, by deed dated the thirtieth day of March, 1896, registered in book 207, page 496, register's office of Davidson county.

## V.

1. **Description of real estate leased (continued).**—Lot No. 144 of McNairy's addition to the city of Nashville, as recorded in plan book 9, page 323, register's office of Davidson county, to which reference is hereby made; said lot fronting 50 feet on the south side of Demonbreun street, and running southwardly between parallel lines 175 feet to an alley, it being the same conveyed to said J. W. Simmons by W. M. Baxter and wife by deed dated March 22, 1889, registered in book 208, page 417, register's office of Davidson county; being the piece or parcel of land, with its appurtenances, conveyed to the terminal company by J. W. Simmons and Martha Simmons, his wife, by deed dated the thirty-first day of March, 1896, registered in book 207, page 497, register's office of Davidson county.

## VI.

**Description of real estate leased (continued).**—Lot No. 85 in McNairy's addition to the city of Nashville, plan of which is recorded in book 9 page 323, register's office of Davidson county, said lot fronting 50 feet on the south side of McGavock street, and extending southwardly, between parallel lines, 166 feet to an alley. Being the piece or parcel of land, with its appurtenances, conveyed to the Terminal Company by Norman Kirkman and Nellie M. Kirkman, his wife, by deed dated the sixth day of April, 1896, registered in book 207, page 498, register's office of Davidson county.

## VII.

1. **Description of real estate leased (continued).**—Lot No. 16, in McNairy's addition to the city of Nashville, plan of which is recorded in book 9, page 323, register's office of Davidson county; said lot fronting 50 feet on the south side of Broad street, and extending southwardly between parallel lines 169 feet to an alley.

2. Lot No. 86 in said McNairy's addition to the city of Nashville, said lot fronting 50 feet on the north side of McGavock street, and extending northwardly between parallel lines 166 feet to an alley; the above described pieces or parcels of land being the same conveyed to E. L. More by Peter Murray by deed dated June 21, 1890, and registered in book 158, page 580, register's office of Davidson county. Being all the pieces or parcels of land, with their appurtenances, which were conveyed to the Terminal Company by E. L. More, by deed dated the twenty-eighth day of March, 1896, registered in book 207, page 499, register's office of Davidson county.

## VIII.

**Same.**—All of lot No. 17 in McNairy's addition to the city of Nashville, as per plan in chancery court plan, book —, page 15, said lot fronting 50 feet on the north side of Broad street and extending northwardly between parallel lines 175 feet to an alley, it being the same conveyed to Pauline D. Lewis by Albert B. Tavel, by deed, dated September 24, 1890, registered in book 147, page 595, register's office of Davidson county; being the piece or parcel of land, with its appurtenances, which was conveyed to the terminal company by Pauline D. Lewis and E. C. Lewis, her husband, by deed, dated the thirty-first day of March, 1896, registered in book 207, page 500, register's office of Davidson county.

## IX.

1. **Same.**—Lot No. 80 of the McNairy plan of West Nashville, as of record in plan book No. 9, page 323, register's office of Davidson county; said lot fronts 50 feet on the north side of McGavock street and runs back between parallel lines 169 feet to an alley.

2. Lot No. 14 of the above-mentioned plan, fronting 50 feet on the south side of Broad street and running back between parallel lines 169 feet to a 12-foot alley, being the same lot among other lots conveyed by John Kirkman to James P. Kirkman, trustee, by deed, recorded in register's office of Davidson county, book 37, page 690, and allotted to Mrs. A. K. Berry by decree of chancery court in the case of *H. C. Prichitt et al. v. Mary N. Kirkman et al.*, recorded in minute book 2, page 468.

3. Lot No. 252 in the above-mentioned plan, fronting 50 feet on the north side of Laurel street and running back 175 feet, with equal width, to a 12-foot alley; being all of the pieces or parcels of land, with their appurtenances, which were conveyed to the terminal company by Edgar Jones, trustee, by deed, dated the fifth day of August 1890, registered in book 208, page 416, register's office of Davidson county.

## X.

**Same.**—Lot No. 13 in the Lunatic Asylum subdivision in the city of Nashville, Tennessee, fronting 50 feet on Kayne avenue, and running back, at right angles to the point between parallel lines, 150 feet to a 10-foot alley, this being the same lot bought by C. C. Christopher, agent of George Spencer and F. A. Spencer, as shown in book 207, page 187, register's office of Davidson county. Being the piece or parcel of land, with its appurtenances, which was conveyed to the terminal company by C. C. Christopher, agent, by deed dated the third day of March, 1896, registered in book 208, page 426, register's office of Davidson county.

## XI.

**Same.**—A part of lot No. 120 of Hynes' addition to the city of Nashville, county of Davidson, and State of Tennessee, bounded and described as follows: Beginning at a point in the south line of Church street, on the dividing line between lots numbers 120 and 121 of said Hynes' addi-



tion; thence running in an easterly direction, with the south line of Church street, 45 feet to a point; thence in a southerly direction, parallel to the east line of McCreary street, 140 feet to a point on the north line of lot No. 122 of said addition; Thence in a westerly direction with said north line of lot No. 122 45 feet to a point on the dividing line between lots numbers 120 and 121 of said addition; thence in a northerly direction, with the said dividing line between lots numbers 120 and 121, 140 feet to the point of beginning; it being the said conveyed to J. W. Thomas, agent, by J. R. Sneed, Mary Sneed, Jos. T. Watts, and John Tansey, by deed dated March 31, 1896, and registered in deed book 207, page 508, register's office of Davidson county; and to the terminal company by J. W. Thomas, agent, by deed dated April 24, 1896, and registered in deed book 206, page 506, register's office of Davidson county.

## XII.

Same; future acquired property; right of way, tracks, depots, etc.—All of lots numbers 15 and 207 of McNairy's addition to the city of Nashville. lot No. 15 fronting 50 feet on the north side of Broad street, and extending northwardly, between parallel lines, 175 feet to an alley; lot No. 207 fronting 50 feet on the south side of Porter street, and extending in a southerly direction, between parallel lines, 175 feet to an alley; they being the same conveyed to the terminal company by Thos. S. Weaver, clerk and master, and E. C. Lewis, by deed dated April 29, 1896, and registered in deed book 208, page 461, register's office of Davidson county.

Also, all other pieces and parcels of land which may be hereafter acquired by the first party within the corporate limits of the city of Nashville, whether the same be acquired by purchase, condemnation, lease, or otherwise.

To have and to hold the said premises, with the appurtenances thereunto belonging, including all rights of way, ways, and other easements; all passenger and freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops, and other buildings, erections, and structures; all main and side railroad tracks, switches, crossovers, turnouts, and all other terminal facilities now located or hereafter to be erected or constructed upon said premises or any part or portion thereof, unto said second parties and their respective successors and assigns for the term of nine hundred and ninety-nine years from the first day of July, 1896.

**ART. 2. Lease embraces property conveyed by Nashville, Chattanooga & St. Louis Railway to terminal company.**—Heretofore, to wit, on the twenty-seventh day of April, 1896,

the Nashville, Chattanooga & St. Louis Railway, by a certain lease, granted and demised, and to farm let, to said first party, its successors and assigns, various pieces or parcels of land, situated in said city, county, and state for a term of nine hundred and ninety-nine years from the first day of May, 1896, upon certain covenants, provisos, and conditions, as in and by said lease, on reference thereto, will more fully appear, and the Louisville & Nashville Railroad Company joined in said lease for the purpose of granting and demising to said first party all rights and privileges in the demised property which it, said Louisville & Nashville Railroad Company, was entitled to under a certain agreement between the Nashville & Chattanooga Railroad Company and the Louisville & Nashville Railroad Company, dated the first day of May, 1872. Said pieces or parcels of land, so granted, demised, and to farm let by said lease of the twenty-seventh day of April, 1896, are bounded and described as follows, viz.:

#### PROPERTY BETWEEN CHURCH AND CEDAR STREETS.

Beginning at the northeast corner of Church and McCreary streets, running thence eastward with the north line of Church street, 435.2 feet to the southwest corner of a 45-foot lot owned by Jas. McKeon; thence northward, parallel with Walnut street and with said McKeon's west line, which is the east line of a lot sold by T. P. Brady to the Nashville, Chattanooga & St. Louis Railway, by deed recorded in book 83, page 134, register's office of Davidson county, 178.3 feet to McKeon's northwest corner, being the southwest corner of a lot sold by Jas. McKeon to the Nashville, Chattanooga & St. Louis Railway, by deed recorded in book 39, page 603, register's office of Davidson county; thence eastward at right angles, 45 feet with McKeon's north line to said McKeon's northeast corner; thence southward, parallel with Walnut street and with McKeon's east line, 175.8 feet to a point in the north line of Church street 480.2 feet east of McCreary street; thence eastward with the north line of Church street 292.8 feet, more or less, to the northwest corner of Church and Walnut streets; thence northward with the west line of Walnut street, 1,048.5 feet to the southwest corner of Cedar and Walnut streets; thence westward with the south line of Cedar street 454 feet to the northeast corner of the Lusk property, which is 463 feet eastward from the southeast corner of Cedar and McCreary streets; thence southward with the line between the Lusk property and the lot sold to the Nashville & Chattanooga Railroad by Vannoy, Turbeville & Co., by deed recorded in book 32, page 165, register's office of

Davidson county, 643.5 feet, more or less, to the north line of the property sold by John Baird to the Nashville & Chattanooga Railroad by deed recorded in book 39, page 599, register's office of Davidson county; thence westward with said line 165.4 feet, more or less, to the southwest corner of the Lusk property, which is the southeast corner of lot No. 114, Hynes' addition, sold by the Capers Chapel to the Nashville, Chattanooga & St. Louis Railway by deed recorded in book 104, page 461, register's office of Davidson county; thence northward with the line between said lot 114 and the Lusk property 145 feet, more or less, to the south line of Hynes street; thence westward with the south line of Hynes street 215 feet, more or less, to the southeast corner of Hynes and McCreary streets; thence southward with the east line of McCreary street 70 feet, more or less, to the line between lots 112 and 13, Hynes' addition; thence eastward with said line 145 feet to the west line of said lot 114; thence southward, parallel with and 145 feet from the east line of McCreary street, with the line between the said John Baird property and Hynes' addition, 245 feet more or less, to the northeast corner of lot 117, Hynes' addition; thence westward with the line between lots 117 and 116, Hynes' addition, 145 feet to the east line of McCreary street, thence southward with the east line of McCreary street 225 feet to the beginning point.

PROPERTY BETWEEN CHURCH AND BROAD STREETS.

Beginning at a point in the north line of Broad street 80.3 feet west of its intersection with the west line of Walnut street, running thence northward with the west side of a stone wall 242.5 feet; thence eastward 67 feet to a point in the west line of Walnut street, distant 234.5 feet from the north line of Broad street; thence northward with the west line of Walnut street 793.1 feet to the southwest corner of Church and Walnut streets; thence westward with the south line of Church street 619.3 feet to the east line of Hyne's addition; thence southward 347.5 feet, more or less, to the north line of Grundy street; thence eastward with the north line of Grundy street 7 feet; thence southward along the east line of lots 206, 207, and 13 of McNairy's addition 660.2 feet to the north line of Broad street; thence eastward with the north line of Broad street 498 feet, more or less, to the beginning.

PROPERTY BETWEEN BROAD AND SPRUCE STREETS.

Lots 69, 71, and 73 of McNairy's plan of West Nashville, fronting 150 feet on the south side of McGavock street and running back between parallel lines at right angles thereto 166 feet to a 12-foot alley, being the same lots conveyed to the Nashville, Chattanooga & St. Louis Railway, by deeds, as follows: Lot 69, by chancery court decree, recorded in book 169, page 181, register's office of Davidson county; lot 71, by C. D. Berry and wife, by deed, recorded in book 69, page 273, register's office of Davidson county, and lot 73, by W. H. Fletcher and wife, by deed, recorded in book 79, page 148, register's office of Davidson county. Also lot No. 138 McNairy's plan of West Nashville, described as follows: Be-



ginning at the northwest corner of Demonbreun street and the old middle Franklin turnpike; thence westward with the north line of Demonbreun street 34.8 feet to the southeast corner of lot No. 139; thence northward with the line between lots 138 and 139, 166.2 feet to a 12-foot alley; thence eastward with the south line of said alley 145.4 feet to the west line of said turnpike; thence southwestward with said west line of said turnpike 200 feet, more or less, to the beginning, being the same lot conveyed to the Nashville, Chattanooga & St. Louis Railway by Robert Ewing, clerk and master, by deed, recorded in book 68, page 465, register's office of Davidson county.

Also, beginning at a point in the southern line of Broad street, 20 feet west of the center line of the main track of the Nashville, Chattanooga & St. Louis Railway, and in the line of the right of way of said road; thence southward, parallel with said railroad and 20 feet therefrom, 629.5 feet, more or less, to a point in the south line of the old middle Franklin turnpike 20 feet west of the center line of the main track of the Nashville, Chattanooga & St. Louis Railway, which point is the northwest corner of lot No. 1 in the McClean plan of lots, which plan is registered in book 21, page 44, register's office of Davidson county; running thence southward, along said line of said turnpike, 250 feet to the southwest corner of lot No. 4 of said McClean plan, where there is an offset in said line of said turnpike; thence eastward, with the south line of said lot No. 4 and with the said offset in said turnpike line,  $14\frac{1}{2}$  feet to the line of said turnpike where it was 50 wide; thence southward, with the said line of said turnpike, 881 feet, to the southwest corner of a lot sold by S. G. Moore and wife and others to the Nashville, Chattanooga & St. Louis Railway by deed recorded in book 47, page 265, register's office of Davidson county; thence eastward, with the south line of said last named lot, 532 feet, more or less, to the center line of Overton street, if extended; thence northward, with the center line of Overton street, if extended, 170 feet, more or less, to the southwest corner of a lot sold by William Woodfolk to the Nashville, Chattanooga & St. Louis Railway by deed recorded in book 69, page 274, register's office of Davidson county, which corner is the same as point C, described in said deed; thence eastward, with the south line of the last named lot, passing through the northwest corner of the Lanier mill building, 198 feet, more or less, to a point in the face thereof about 14 feet from the said corner, and 48 feet, more or less, distant from the center line of the main track of the Nashville, Chattanooga & St. Louis Railway; thence southwardly, along the face of said mill, 163 feet to an angle therein, which is 33.9 feet from the center line of said main track; thence southwardly, along the face of said mill, parallel with the said railroad, and 33.9 feet from its center line, 171.5 feet, more or less, to a point in the center of what was formerly Hay street; thence south, with the said center line of Hay street, 104 feet, more or less, to the north line of a 10-foot alley, which runs parallel to Gleaves street; thence eastwardly, along the north line of said alley,  $16\frac{1}{2}$  feet, to the west line of a 12-foot alley; thence northwardly along said line  $10\frac{1}{2}$

feet, more or less, to the right of way line of the Nashville, Chattanooga & St. Louis Railway, 20 feet from the center line of the main track of the same; thence southeastward, along said right of way line, 272 feet, more or less, to the northwest corner of Gleaves and Spruce streets; thence northward, with the west line of Spruce street, 87 feet, more or less, to the line of the right of way of said railroad, 30 feet from its center line; thence northwestward, along said right of way line, 240 feet, more or less, to the west line of a 12-foot alley, at a point 20 feet northeastward from the center line of said railroad; thence north, with the west line of said alley, 93 feet, more or less, to the northeast corner of a lot conveyed to the Nashville, Chattanooga & St. Louis Railway by Robert Ewing, C. and M., by deed recorded in book 68, page 263, register's office of Davidson county; thence westward, with the north line of said lot, passing through the Nashville Mills building, 136 feet, more or less, to a point in the face thereof 25.5 feet from the center line of the main track of said railroad; thence northwestward, parallel with said railroad and along the face of said mill, 112 feet, more or less, to the northwest corner of said mill building; thence northeastward, at right angles to the face of said mill, 13 inches, more or less, to the northern face of a brick boundary wall erected by the Nashville, Chattanooga & St. Louis Railway; thence northwestward, along the face of said wall, parallel with said railroad, 106 feet, to an offset; thence southwestward, at right angles along said offset, 12.5 feet, to the face of said wall, at a point 14 feet from the center line of the main track of said railroad; thence northwestward, along the face of said wall, 80 feet, to a point 13.4 feet from the center line of said main track, at the point of curve of the same; thence northward, along said wall in a curve to the right, 200 feet, to a point 14.4 feet from said center line; thence northward, along said wall, 200 feet, to a point 14.1 feet from said center line; thence northward, along said wall, 160 feet, to a point 13.7 feet from the center of said railroad, at the point of tangent thereof; thence northward, with the face of said wall in a straight line along the line of an alley and South Walnut street, 1,325 feet, more or less, to its intersection with the south line of Broad street, at a point 20.5 feet from the center line of said main track; thence westward, with the southern line of Broad street, 40.5 feet, to a point in the right of way line 20 feet west of the center line of said railroad, to the beginning.

Also, all rights of way, railroad tracks, and property of every other description which the first party has in or across Cedar street, east of the west line of Belleville street, and all rights of way, railroad tracks, and property of every other description which the first party has in or across Church street and in or across Broad street.

Said first party hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant,

bargain, sell, assign, transfer, and set over unto said second parties, and their respective successors and assigns, each and all of said pieces or parcels of land described in this article, with the appurtenances, including all the rights of way, ways, and other easements, all passenger and freight <sup>Easements, depot build- ings, etc., pass.</sup> depot buildings, office buildings, sheds, warehouses roundhouses, shops, and other buildings, erections, and structures, all main and side railroad tracks, switches, cross-overs, and turnouts, and all other terminal facilities now located, or hereafter to be erected or constructed upon said premises described in this article, or any part or portion thereof; also all the estate, right, title, and interest, and the said term of years, yet to come and unexpired, and all the property, claim, and demand whatsoever of said first party, of, in, and to the same, and every part and parcel thereof, together with said lease itself, and all rights of renewal or extension of the same, now owned by said first party.

To have and to hold said pieces or parcels of land described in this article, and hereby granted and assigned, and every part thereof, unto said second parties, and their respective successors and assigns, for and during the residue of said term of years, in and by said lease granted, in as full, large, and ample a manner, to all intents and purposes, as <sup>Expiration of lease.</sup> said first party, or its successors or assigns, now holds, or may at any time hold and enjoy the same by virtue of said lease, subject, nevertheless, to the several rents, covenants, provisos, and conditions in the said lease reserved and contained.

**ARTICLE 3. Lease embraces property conveyed by Louisville & Nashville Railroad Company to Terminal Company.**—Heretofore, to-wit, on the twenty-seventh day of April, 1896, the Louisville & Nashville Railroad Company, by a certain lease, granted and demised and to farm let to said first party, its successors and assigns, various pieces or parcels of land, situated in said city, county, and state, for a term of 999 years from the first day of May, 1896, upon certain covenants, provisos, and conditions, as in and by said lease, on reference



thereto, will more fully appear; and the Nashville, Chattanooga & St. Louis Railway joined in said lease for the purpose of granting and demising to said first party all rights in the demised property which it, said Nashville, Chattanooga & St. Louis Railway, was entitled to under a certain agreement between the Nashville, Chattanooga & St. Louis Railway and the Louisville & Nashville Railroad Company, dated the first day of May, 1872. Said pieces or parcels of land, so granted, demised, and to farm let by said lease of the twenty-seventh day of April, 1896, are bounded and described as follows, viz:

1. A lot of land beginning at a stake on the south side of Gay street, the northeast corner of a tract of land owned in 1858 by Wm. Copers, and running thence southerly, at right angles, 110 feet, more or less, to an alley; thence in an easterly direction with said alley 38 feet; thence in a northerly direction 110 feet to a point on the south line of Gay street; thence in a westerly direction 38 feet to the place of beginning.

2. A triangular lot beginning at a point on the south side of Gay street, at the intersection of the east line of the lot described in description No. 1; thence in a southerly direction with the west line of lot described in description No. 1, 25 feet; thence in a northeasterly direction 25 feet, more or less, to a point on the south side of Gay street, 4 feet east of the east line of lot described in description No. 1; thence in a westerly direction, with the south line of Gay street, 4 feet to the point of beginning.

3. A lot or parcel of land, being all of lot No. 2 and  $18\frac{1}{2}$  feet off the east side of lot No. 4, of the B. M. Barnes addition to the city of Nashville, fronting 52 feet on the north side of Pearl street and extending north between parallel lines 110 feet, more or less, to an alley.

4. A lot or parcel of land beginning at a point on the south line of Pearl street, being the northwest corner of the land originally owned by H. Murray; thence southerly, at right angles to Pearl street, 60 feet; thence westerly, parallel to Pearl street, 15 feet; thence southerly at right angles 165 feet 7 inches, more or less, to the north line of Shankland street; thence in a westerly direction with the north line of Shankland street 80 feet; thence in a northerly direction at right angles 225 feet 7 inches, more or less, to the south line of Pearl street; thence in an easterly direction, with the south line of Pearl street, 95 feet to the point of beginning.

5. A lot or parcel of land beginning at a point on the north line of Cedar street 138 feet 1 inch easterly from the east line of Bellville street; thence running northerly, parallel with Bellville street, 248 feet to the south line of Shankland street; thence easterly along the south line of Shankland street 35 feet; thence southerly at right angles 68 feet; thence westerly, parallel with Cedar street, 11 feet; thence in southerly direc-

tion 180 feet to Cedar street; thence in a westerly direction, with the north line of Cedar street, 24 feet to the place of beginning.

**6. Railroad passes.**—Also the railroad and right of way on which the same is constructed from the south line of Gay street, over the lots above described and across Pearl and Shankland and Cedar streets, to the south line of Cedar street.

And the terminal company may deem it necessary to hereafter acquire by lease, or assignment of lease, other pieces or parcels of land, with their appurtenances, situated in said city of Nashville, in the state of Tennessee.

Said first party hath granted, bargained, sold, assigned, transferred, and set over, and by these presents doth grant, bargain, sell, assign, transfer, and set over unto said second parties and their respective successors and assigns, each and all of said pieces or parcels of land described in this article, with the appurtenances thereunto belonging, including all rights of way, ways, and other easements, and all railroad tracks and all other terminal facilities now located, or hereafter to be erected or constructed upon said premises described in this article, or any part or portion thereof; also all the estate, right, title, and interest, and the said term of years yet to come and unexpired, and all the property, claim, and demand whatsoever of said first party, of, in, and to the same and every part and parcel thereof, together with said lease itself, and all rights of renewal or extension of the same now owned by said first party.

Rights of way,  
easements,  
tracks, depot  
buildings, etc.,  
pass.

To have and to hold said pieces or parcels of land described in this article, and hereby granted and assigned, and every part thereof, unto said second parties and their respective successors and assigns, for and during the residue of said term of years, in and by said lease granted, in as full, large, and ample manner, to all intents and purposes, as said first party, or its successors or assigns, now hold, or may at any time hold and enjoy the same, by virtue of said lease, subject, nevertheless, to the several rents, covenants, provisions, and conditions in the said lease reserved and contained.

Expiration of  
lease.

**ART. 4. Guarantee of peaceable possession.**—Said first party doth hereby, for itself, its successors, and assigns, cove-

nant with said second parties, and their respective successors and assigns, that they, paying the rent hereinafter reserved, and performing the covenants hereinafter on their part contained, shall and may peaceably possess and enjoy the premises described in the first article, for the term granted in said first article, without any interruption or disturbances from said first party, or its successors or assigns, or any other person or persons whomsoever lawfully claiming by, from, or under said first party, or its successors or assigns.

**ART. 5. Original leases of the two railroads to terminal company unimpaired by this lease, warranty as to right to lease, peaceable possession.**—Said first party doth hereby, for itself, its successors, and assigns, covenant with said second parties, and their respective successors and assigns, that notwithstanding any act, deed, or thing, whatsoever made, done, or suffered to the contrary, by said first party, or its successors or assigns, the said lease executed by the said Nashville, Chattanooga & St. Louis Railway mentioned in the second article, and the said lease executed by the said Louisville & Nashville Railroad Company, mentioned in the third article, are still in force, for the respective residue of the said terms therein specified, and thereby granted; and neither void nor voidable. And, also, that, notwithstanding any such act, deed or thing, as aforesaid, said first party now hath, in itself, good right, by these presents, to assign the said premises described in the second and third articles, respectively, together with their appurtenances, unto said second parties, and their respective successors and assigns, for the respective residue of the said terms, in manner aforesaid. And, also, that subject to the payment of rent, and the performance of the covenants, provisos, and conditions in the said two last mentioned leases contained, and by, and on the part of said first party, its successors and assigns, to be observed and performed, it shall be lawful for said second parties, and their respective successors and assigns, henceforth during the respective residues of the said terms, to enter into, and upon, hold, and enjoy the said premises described in the second and third articles respectively, together



with their appurtenances, and to receive and take the rents and profits thereof, without any hinderance or interruption whatsoever of said first party, its successors or assigns, or any other person or persons whomsoever, lawfully claiming by, from or under said first party, its successors or assigns.

**ART. 6. Agreement to renew lease for 999 years; how.**—Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties, and their respective successors and assigns, that said first party, its successors and assigns, will, on or before the expiration of the term in the first article granted, at the request and expense of the said second parties, or their respective successors or assigns, grant and execute to them a new lease of the premises demised and described in the first article, together with their appurtenances, for the further term of nine hundred and ninety-nine years, to commence from the expiration of said term in the first article granted, at the same yearly rent, payable in like manner, and subject to the like covenants, provisos, and conditions, except a covenant for further renewal, as are contained in these presents in relation to said premises.

**ART. 7. Same.**—Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties, and their respective successors and assigns, that said first party, its successors and assigns, will, on or before the expiration of the terms granted in the leases mentioned in the second and third articles, at the request and expense of said second parties, or their respective successors or assigns, grant and execute to them assignment of any new leases which said first party, its successors or assigns, may hereafter obtain of the premises assigned and described in said second and third articles, together with their appurtenances, for the further term of nine hundred and ninety-nine years, to commence from the expiration of the terms granted in said leases mentioned in the second and third articles.

**ART. 8. Agreement to execute additional papers, etc., to perfect title, when.**—Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties,

and their respective successors and assigns, that said first party, its successors and assigns, will henceforth, during the residue of the term granted in the first article, and during the residue of the term that may be granted in any new lease which may be executed, as provided in the sixth article, upon every reasonable request, and at the cost of said second parties, or their respective successors or assigns, make, do, and execute, or cause to be made, done, and executed, all such reasonable acts, deeds, and assurances in the law, whatsoever, for the further, better, or more satisfactory granting, demising or assuring the said premises, or any part thereof, described in the first article, together with their appurtenances, unto said second parties, and their respective successors and assigns, for the then residue of the term granted in said first article, or for the then residue of the term that may be granted in any new lease which may be executed, as provided in the sixth article, as by said second parties, or their respective successors or assigns, or their counsel in the law, shall be reasonably required, and be tendered to be made, done, and executed.

And upon like reasonable request, and at the like cost, of said second parties, or their respective successors or assigns, said first party, its successors and assigns, will, henceforth, during the respective residue of the said terms qualified in the said leases mentioned in the second and third articles, make, do, and execute, or cause to be made, done, and executed, all such lawful and reasonable acts, deeds, and assurances in the law, whatsoever, for the further, better, or more satisfactorily assigning or assuring the said premises, or any part thereof, described in the second and third articles, together with their appurtenances, unto said second parties, and their respective successors and assigns, for the then respective residue of the said terms specified in the said lease mentioned in the second and third Articles, as by said second parties, or their respective successors or assigns, or their counsel in the law, shall, be reasonably required and be tendered to be made, done, and executed.

**ART. 9. Agreement to construct depot, tracts, terminal facilities, etc., on leased premises.**—Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties, and their respective successors and assigns, that said first party, its successors and assigns, will, with all reasonable dispatch, and during the term granted in the first article, erect and construct upon the premises described in the first, second, and third articles, all such passenger and freight depot buildings, office buildings, sheds, warehouses, round-houses, shops, and other buildings, erections, and structures, and all such main and side railroad tracts, switches, crossovers, and turnouts, and all such other terminal facilities as may be necessary to provide suitable and adequate railroad terminal facilities for such of the railroads centering at Nashville, Tennessee, as may contract therefor, with said first party, its successors or assigns.

**ART. 10. Terminal company to keep insured depot, buildings, etc.**—Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties and their respective successors and assigns, that as soon as the same shall be erected or constructed, said first party, its successors and assigns, shall, and will, forthwith insure against loss by fire the improvements described in the ninth article as passenger and freight depot buildings; office buildings, sheds, warehouses, roundhouses, shops and other buildings, erections, and structures, main and side railroad tracks, switches, crossovers, and turnouts, and other terminal facilities which may be hereafter erected or constructed upon the premises or property described in the first, second, and third articles, and all additions thereto and extensions thereof; that the same shall be so insured, to the full value thereof, in some respectable insurance company or companies; that the same shall be kept so insured during the term granted in the first article, and during the term that may be granted in any new lease which may be executed, as provided in the sixth article, and during the terms that may be assigned in any assignments of the leases mentioned in the second, third, and seventh articles; and as often



as the property so insured shall be burned down or damaged by fire, all and every the sum or sums of money which shall be recovered or received by said first party, its successors or assigns, for, or in respect of, such insurance, shall be paid over by said first party, its successors or assigns, to said second parties or their respective successors or assigns, to be laid out and expended by them in rebuilding or repairing the property so insured or such parts thereof as shall be destroyed or injured by fire.

**ART. 11. Terminal company to pay all taxes, assessments, etc., on leased property.**—Said first party doth hereby, for itself, its successors and assigns, covenant with said second parties, and their respective successors and assigns, that said first party, its successors and assigns, shall, and will, during the term granted in the first article, and during the term that may be granted in any new lease which may be executed as provided in the sixth article, and during the terms that may be assigned in any assignments of the leases mentioned in the second, third, and seventh articles, pay and discharge all taxes, rates, charges, and assessments that may be levied or imposed, during the term or terms aforesaid, upon said premises or property described in the first, second, and third articles, and the improvements described in the ninth article as passengers and freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops, and other buildings, erections, and structures, main and side railroad tracks, switches, cross-overs, and turnouts, and other terminal facilities which may be hereafter erected or constructed upon the premises or property described in the first, second, and third articles, and all additions thereto and extensions thereof.

**ART. 12. Rent, amount and how paid.**—Said second parties do hereby, for themselves and their respective successors and assigns, covenant with the said first party, its successors and assigns, that, as rent for the premises or property described in the first article, and for rent of the improvements described in the ninth article as passenger and freight depot buildings, office buildings, sheds, warehouses, roundhouses, shops, and

other buildings, erections, and structures, and main and side railroad tracks, switches, crossovers, and turnouts, and other terminal facilities, and all additions thereto and extensions thereof, said second parties, and their respective successors and assigns, will pay to said first party, its successors and assigns, annually, in each and every year during the term granted in said first article, and during the term that may be granted in any new lease which may be executed, as provided in the sixth article, and during the term that may be assigned in any assignments of the leases mentioned in the second, third, and seventh articles, a sum equal to interest at four per cent. per annum upon the actual cost of all expenditures heretofore made, or to be hereafter made, by said first party, its successors and assigns, from time to time, in the purchase or other acquisition of said premises or property, and in the erection and construction of said improvements and of all additions thereto and extensions thereof, and to all taxes, rates, charges, and assessments that may be levied or imposed during the term or terms aforesaid upon said premises or property and said improvements, and all additions thereto and extensions thereof, and to the cost of such insurance as may be necessary to keep said premises or property and said improvements, and all additions thereto and extensions thereof, insured to their full value during the term or terms aforesaid.

On the first day of October, in each and every year during the term or terms aforesaid, the sum which will be due as rent, aforesaid, for the next succeeding year, upon the basis in this article established, shall be ascertained and fixed by the parties hereto, and the sum so ascertained and fixed shall be paid by said second parties, and their respective successors and assigns, to said first party, and its successors and assigns, in equal quarterly payments, on the first days of October, January, April, and July in the year for which said sum may be so established and fixed.

**ART. 13. Railroad companies agree to pay above rent, keep covenants and hold terminal company harmless.**—Said second parties do hereby, for themselves, and their respective suc-

cessors and assigns, covenant with said first party, its successors and assigns, that said second parties, and their respective successors and assigns, shall, and will, from time to time, and at all times during the respective residues of the said terms specified in the said leases, mentioned in the second and third articles, well and truly pay or cause to be paid, unto the lessors mentioned in said leases respectively, or unto such person, or persons, as for the time being shall be entitled to receive the same, the yearly rents by said leases respectively reserved and made payable, which from thenceforth shall grow due; and also well and truly perform, fulfill, and keep all and singular the covenants, provisos, and conditions contained in said leases respectively; and which by, and on the part of said first party, or said second parties, is, or are, to be paid, observed, and performed; and also shall, and will, from time to time, and at all times, well and sufficiently save, defend, keep harmless, and indemnified, said first party, its successors and assigns, from and against all costs, charges, damages, and expenses whatsoever, which it, or they, or either of them, shall or may sustain, or become liable to, by reason or means of said second parties, or their respective successors or assigns, not paying all or any part of the said rents from time to time, to become due for, or in respect of said premises, or any part or portion of them, and their appurtenances, assigned in the second and third articles, from and after the execution of these presents, or by reason or means of their not observing and fulfilling any of the covenants, provisos, or conditions in the said leases respectively reserved and contained, which by and on the part of said second parties, and their respective successors and assigns, are to be observed, performed, fulfilled, and kept.

**ART. 14. Railroad companies to keep premises in repair, when and how.**—Said second parties do hereby, for themselves and their respective successors and assigns, covenant with said first party, its successors and assigns, that said second parties, and their respective successors and assigns, shall, and will, during the term granted in the first article, and during the term that may be granted in any new lease which



may be executed, as provided in the sixth article, and during the terms that may be assigned in any new assignments of the leases mentioned in the second, third, and seventh articles, at their proper costs, and charges, well and sufficiently maintain and keep in repair when, and as often as the same shall require, the premises described in the first, second, and third articles, together with their appurtenances, including all rights of way, ways, and other easements, all such passenger and freight depot buildings, office buildings, sheds, warehouses, round-houses, shops, and other buildings, erections, and structures, and all such main and side railroad tracks, switches, crossovers, and turnouts, and all such other terminal facilities, as may be hereafter erected or constructed by the first party, its successors or assigns, upon the premises described in the first, second, and third articles. And also, that in case the same, or any part thereof, shall, at any time during said terms, or during either of them, be destroyed or injured by fire, wind, or lightning, said second parties and their respective successors and assigns, shall, and will, at their proper costs and charges, forthwith proceed to rebuild or repair the same, in as good condition as the same were before such destruction or injury. *Provided*, however, that all and every the sums or sum of money which shall be recovered or received by said first party, its successors or assigns, for or in respect of any insurance upon any of such properties, shall be paid over by said first party, its successors and assigns, to said second parties, their respective successors or assigns, to be laid out and expended by them in rebuilding or repairing the property so insured, or such parts thereof as shall be destroyed or injured by fire, as provided in the tenth article.

**ART. 15. Terminal company has right to enter on premises and notify railways of want of repair; when to be repaired.**—Said second parties do hereby, for themselves and their respective successors and assigns, covenant with said first party, its successors and assigns, that it shall be lawful for said first party, its successors or assigns, by its or their agent or agents, at all seasonable times, during the term granted in

the first article, and during the term that may be granted in any new lease which may be executed, as provided in the sixth article, and during the terms that may be assigned in any new assignment of the leases mentioned in the second, third, and seventh articles, to enter upon the premises described in the first, second, and third articles, and to examine the condition of the said premises; and, further, that all wants of reparation which, upon such views, shall be found, and for the amendment of which notice in writing shall be left at the premises, said second parties, and their respective successors and assigns, shall and will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.

**ART. 16. Covenant to peaceably surrender at expiration of lease.**—Said second parties do hereby, for themselves and their respective successors and assigns, covenant with said first party, its successors and assigns, that at the expiration of the term granted in the first article, and at the expiration of the term that may be granted in any new lease which may be executed, as provided in the sixth article, or at any sooner termination of this present lease, or of any such new lease, said second parties, and their respective successors and assigns, shall, and will, peaceably surrender and yield up unto said first party, its successors and assigns, the premises described in the first article, with their appurtenances.

**ART. 17. Terminal company to re-enter and take possession on default of railways.**—Said second parties do hereby, for themselves and their respective successors and assigns, covenant with said first party, its successors and assigns, that if the rents reserved in the twelfth article, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid (although no formal demand shall have been made thereof), or, in case of the breach or non-performance of any of the covenants, provisos, or conditions herein contained, on the part of the said second parties, and their respective successors and assigns, then it shall be lawful for said first party, its successors or assigns, at any time there-

after, into and upon the premises described in the first article, or any part thereof, in the name of the whole, to re-enter and the same again to repossess and enjoy, as of its or their former estate, anything hereinbefore contained to the contrary notwithstanding.

In witness whereof, The said parties hereto have caused these presents to be signed by their respective presidents or vice-presidents, attested by their respective secretaries or assistant secretaries, and their respective corporate seals to be hereunto affixed, the date above written.

LOUISVILLE & NASHVILLE TERMINAL COMPANY,  
By M. H. SMITH, *President*.

[L. & N. T. CO. SEAL.]

Attest: J. H. ELLIS, *Secretary*.

LOUISVILLE & NASHVILLE RAILROAD COMPANY,  
By S. R. KNOTT, *First Vice-President*.

[L. & N. R. R. CO. SEAL.]

Attest: J. H. ELLIS, *Secretary*.

NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,  
By J. W. THOMAS, *President*.

[N., C. & ST. L. RY. SEAL.]

Attest: J. H. AMBROSE, *Secretary*.

**Lease, where registered.**—The above lease was properly acknowledged, and registered in the register's office of Davidson county, Tenn., in book 222, p. 175.



## CHAPTER XLIX.

*CONSOLIDATED MORTGAGE TO SECURE AN ISSUE OF \$20,000,000  
FIVE PER CENT. GOLD COUPON BONDS OF THE DENOMINA-  
TION OF \$1,000 EACH. OTHER MORTGAGES.*

**CONSOLIDATED MORTGAGE.**

**Parties.**—This indenture, made and entered into this second day of April, in the year of our Lord one thousand eight hundred and eighty-eight, by and between the Nashville, Chattanooga and St. Louis Railway, a corporation duly incorporated under the laws of the State of Tennessee, and with corporate rights in the states of Kentucky, Georgia and Alabama, party of the first part, hereinafter called the railway; and the United States Trust Company of New York, a corporation duly incorporated under the laws of the State of New York, as trustee, party of the second part, hereinafter called the trustee, WITNESSETH:

**Preamble.**—WHEREAS, The said railway has heretofore constructed or acquired, and now owns, maintains and operates, certain lines of railroad and branches within the States of Tennessee, Kentucky, Georgia and Alabama, as follows:

**Description of property, main branch, including north-western.**—A line of railroad commencing at Nashville, in the State of Tennessee, and running thence through the counties of Davidson, Rutherford, Bedford, Coffee and Franklin, in the State of Tennessee, the county of Jackson, in the State of Alabama, and the county of Dade, in the State of Georgia, to Chattanooga, in the county of Hamilton, and State of Tennessee, of the total length of one hundred and fifty-one and fifteen-one-hundredths miles (originally constructed by the Nashville & Chattanooga Railroad Company, which was chartered on the eleventh day of December, 1845), known as the Chattanooga division; and a line of railroad commencing at Nashville, in the State of Tennessee, and running thence to Hickman, in the

county of Fulton, in the State of Kentucky, of the total length of one hundred and sixty-nine and six one-hundredths miles, (originally constructed by the Nashville & Northwestern Railroad Company, which was chartered on the twenty-second day of January, 1852,) known as the Northwestern Division;

Which two lines, having been in due form of law consolidated, under the name and style of the Nashville, Chattanooga & St. Louis Railway (the Nashville & Chattanooga Railroad Company having purchased the property of the Nashville & Northwestern Railroad Company), now constitute the main line of the said railway; and are subject to a mortgage to the government of the United States to secure the sum of \$1,000,000, under which bonds to the amount of \$500,000, due June 1, 1891, are outstanding, and, further, subject to a first mortgage made by the railway to Adrian Iselin, Richard T. Wilson, and Vernon K. Stevenson, as trustees, dated July 1, 1873, given to secure an issue of bonds to the amount of \$6,800,000, and due July 1, 1913, of which \$500,000 are held to take up the bonds secured by said mortgage to the United States, and the remainder are outstanding; and subject, also, to a second mortgage made by the railway to the Central Trust Company, of New York, as trustee, dated January 1, 1881, to secure the sum of \$1,000,000, due January 1, 1901, under which bonds to the amount of said sum of \$1,000,000 are now outstanding.

1. The mortgage, above referred to, given to the government of the United States for \$1,000,000, has been paid in full, and bonds cancelled. The money to pay it was raised by the sale of bonds issued under this mortgage, to the amount of \$500,000. The other bonds and mortgages above referred to are still outstanding.

2. For Chattanooga (main) line, see pp. 1-76 herein; for Northwestern (part of main) line, see p. 76 herein.

**Same. Sparta, Fayetteville, and Huntsville Branches.—**

Also, a line commencing at Tullahoma, in the county of Coffee and State of Tennessee, a point on the said main line, and running thence, through the counties of Coffee, Warren, and White, to Sparta, in the said state, of the total length of sixty and fifty-eight one-hundredths miles, and known as the Mc-Minnville Branch; also, a line commencing at Decherd, in the

county of Franklin and State of Tennessee, a point on the said main line, and running thence, through the county of Franklin, to Fayetteville, in the county of Lincoln, in said State of Tennessee, of the total length of thirty-eight and seventy-eight one-hundredths miles, and known as the Fayetteville Branch; also, a line commencing at Elora, a point on the said Fayetteville Branch, and running thence to Huntsville, in the State of Alabama, of the total length of twenty-six and eighty one-hundredths miles, and known as the Huntsville Branch.

Which three last described lines of railroad or branches are together subject to a certain mortgage made by the railway to Adrian Iselin and Richard T. Wilson, as trustees, dated January 1, 1877, to secure an issue of bonds, due January 1, 1917, under which bonds to the amount of \$750,000 are now outstanding.

1. The mortgage and bonds above referred to are still outstanding.
2. For Sparta Branch, see pp. 166 and 192 herein; for Fayetteville Branch, see p. 152 herein; for Huntsville Branch, see pp. 152, 214, herein; for Bon Air extension, see p. 199 herein.

**Same. Tracy City Branch.**—Also a line commencing at Cowan, in the county of Franklin and state of Tennessee, a point on the said main line, and running thence through the counties of Franklin and Marion, in said state, to Tracy City, in the county of Grundy, in said state, of the total length of twenty miles, and known as the Tracy City branch, which said line of railroad or branch is subject to a certain mortgage made by the railway to the Central Trust Company of New York, as trustee, dated January 1, 1887, given to secure an issue of bonds, due in installments at several dates, under which bonds to the amount of \$600,000 are now outstanding.

1. Of the bonds above referred to \$160,000 have been paid, leaving a balance outstanding, which are not due, of \$440,000. The bonds that have been paid have not as yet been canceled, but held by the trustee.
2. For Tracy City Branch, see p. 277 herein.

**Same. Jasper, Inman Branches.**—Also a line commencing at Bridgeport, in the county of Jackson and state of Alabama, a point on the said main line, and running thence to Dunlap,



in the county of Sequatchie in the state of Tennessee, known as the Jasper Branch, together with a branch from said Jasper Branch, extending from Victoria to Inman, both in the county of Marion and state of Tennessee, which said branches, in all, are of the total length of forty-three and thirty one hundredths miles; the first twelve miles of the branch first above described, extending from Bridgeport in the state of Alabama, to Jasper, in the state of Tennessee, has been treated as a portion of the main line, and is included in and covered by the mortgage hereinabove particularly described, dated July 1, 1873, given to secure \$6,800,000, due July 1, 1913; that portion thereof, from Jasper to Victoria—seven and one-half miles—is subject to a mortgage made by the company to E. L. Jordan and J. A. Satterwhite, as trustees, dated February 1, 1877, given to secure an issue of bonds, due January 1, 1906, under which bonds to the amount of \$90,000 are outstanding; and the remainder from Victoria to Dunlap, eighteen and thirty one-hundredths miles, and from Victoria to Inman, five and fifty one-hundredths miles, is subject to a mortgage made by the company to the Central Trust Company of New York, as trustee, dated January 1, 1883, and given to secure an issue of bonds due January 1, 1923, under which bonds to the amount of \$371,000 are now outstanding.

1. The bonds and mortgages above referred to are still outstanding.
2. For Jasper, Inman & Sequatchie Branches, see pp. 264, 266, 269 herein.

**Same. Lebanon Branch.**—Also, a line commencing at Nashville, in the State of Tennessee, and running thence to Lebanon, in the county of Wilson, in said state, of the total length of twenty-nine and twenty-one one-hundredths miles, and known as the Lebanon Branch, which is subject to a mortgage made by the railway to Vernon K. Stevenson and Walston H. Brown, as trustees, dated October 1, 1877, given to secure an issue of bonds due October 1, 1917, under which bonds to the amount of \$300,000 are outstanding.

1. The bonds and mortgages above referred to are still outstanding.
2. For Lebanon Branch, see p. 129 herein.

**Same. Centreville Branch.**—Also, a line commencing at Dickson, in the county of Dickson and State of Tennessee, a point on the said main line, and running thence, through the counties of Dickson and Hickman, to the line of Lewis county, in said State of Tennessee, of the original total length, as constructed, of forty-seven miles, but which line, by straightening, has been reduced to forty-five and seventy one-hundredths miles, and known as the Centreville Branch, which is subject to a mortgage made by the railway to the Central Trust Company of New York, as trustee, dated January 1, 1883, given to secure an issue of bonds due January 1, 1923, under which bonds to the amount of \$376,000 are outstanding.

1. The bonds and mortgage above referred to are still outstanding.
2. For Centreville Branch, see p. 227 herein.

**Bon Air Branch.**—Also, a line (being an extension of the said hereinbefore described McMinnville Branch) running from Sparta, in the county of White, and State of Tennessee, to Bon Air, in said county and state, of the total length of six and fifty one-hundredths miles, known as the Bon Air Branch, which is subject to a mortgage made by the railway to the Central Trust Company of New York, as trustee, dated July 1, 1887, to secure an issue of bonds, due July 1, 1917, under which bonds to the amount of \$130,000 are outstanding.

1. Of the bonds above referred to, \$16,000 have been exchanged for sixteen bonds under this mortgage, leaving \$114,000 still outstanding.
2. For Bon Air Branch, see p. 199 herein.

**Same. Duck River Valley, or Columbia Branch.**—Also, a line commencing at Columbia, in the county of Maury, and State of Tennessee, and running thence, through the county of Marshall, to Fayetteville, in the county of Lincoln, in said State of Tennessee, a point on the Fayetteville Branch, of the total length of forty-seven and ninety-two one-hundredths miles, and known as the Duck River Valley Branch, which was originally owned by the Duck River Valley Narrow Gauge Railroad Company, and was thereafter duly purchased by and conveyed to the company, which is subject to a first mortgage made by the said Duck River Valley Narrow Gauge Railroad

Company to Edgar Jones and Lucius Frierson, as trustees, dated January 1, 1876, given to secure an issue of bonds due January 1, 1896, under which bonds to the amount of \$250,000 are outstanding; and subject also to a second mortgage, made by the said Duck River Valley Narrow Gauge Railroad Company to G. M. Fogg and Thomas D. Fite, as trustees, dated November 1, 1879, given to secure a further issue of bonds, due November 1, 1909, under which bonds to the amount of \$140,000 are outstanding.

1. The \$250,000 of bonds, above referred to, have been taken up and are now held by the trustee. The money to pay them was raised by a sale of two hundred and fifty bonds under this mortgage. Of the \$140,000 of bonds above referred to, all have been taken up save \$22,000, which amount is now outstanding. The money to pay these was raised by sale of one hundred and eighteen bonds under this mortgage.

2. For Duck River Valley Branch, see p. 250 herein.

**Same. Shelbyville branch.**—Also, a branch commencing at Wartrace, in the county of Bedford, and State of Tennessee, a point on the said main line, and running thence to Shelbyville, in the said county of Bedford, of the total length of eight and one one-hundredth miles, known as the Shelbyville Branch, but which has been treated as a part of the main line and which is embraced in the said hereinbefore described mortgage given to secure the sum of \$6,800,000.

1. The bonds above referred to are still outstanding.

2. For Shelbyville Branch, see p. 286 herein.

**Same. West Nashville Branch.**—Also a branch, commencing at a point on the said hereinbefore described Northwestern Division, in the vicinity of Nashville aforesaid, in the State of Tennessee, and running thence to West Nashville, of the length in all of three and twenty one-hundredths miles, known as the West Nashville Branch, and which is not covered by any mortgage; and,

For West Nashville Branch see p. 318 herein.

**Amount of underlying mortgages.**—WHEREAS, The said hereinbefore described main line and the said above described several lines and branches, taken as a whole, are subject to the several mortgages hereinbefore mentioned, aggregating the



sum of ten million eight hundred and seven thousand dollars (\$10,807,000), in all; and,

Since this mortgage was written \$1,044,000 of the bonds above referred to have been taken up, leaving \$9,763,000 still outstanding at this writing. These added to the amount of bonds now issued under this five per cent. mortgage, which is \$6,233,000, makes a total bonded indebtedness of \$15,996,000 now existing.

**Railway company liable for all.**—WHEREAS, All the bonds representing which amount, although secured on said main line or branches separately, are the bonds of the railway, except as to the Duck River Valley Branch, above set forth, the said two issues of bonds upon which were made by the said Duck River Valley Narrow Gauge Railroad Company prior to the conveyance of the said road to the railway, and for which bonds the railway is responsible, having assumed the payment thereof; and

**Said underlying bonds to be taken up.**—WHEREAS, The railway proposes to take up, by redemption, purchase, exchange, or payment, and to retire and cancel all of said several issues of bonds so existing and outstanding, secured by said several existing mortgages, both upon the main line and upon the said several connecting lines and branches, and each of them, as is hereinafter particularly provided; and

**After-acquired property subject to this mortgage.**—WHEREAS, The railway may, from time to time hereafter, build or acquire other lines of road, and may extend the same, or the main line and branches hereinbefore described, or some of them, or may construct other branches, and proposes to make the same subject to the lien hereof, and to issue bonds hereunder therefor, as is hereinafter particularly provided; and

Since the execution of this mortgage the railroad company has purchased and leased the following property: (1) Tennessee & Coosa Railroad (see p. 287 herein); (2) the Western & Atlantic Railroad (see p. 335 herein); (3) the Rome Railroad (see p. 379 herein); (4) the Middle Tennessee & Alabama Railroad (see p. 406 herein); (5) the Chattanooga Terminal Railway (see p. 448 herein); the Tennessee Midland Railroad (see p. 455 herein); (6) the Paducah, Tennessee & Alabama Railroad (see p. 487 herein); (7) the Louisville & Nashville Terminal Company's railroad

property (see chapter XLVIII. herein); (7) the Allen's Creek extension (see p. 228 herein, note 2); (8) the Swan Creek extension (see p. 228 herein, note 3); (9) the Huntsville-Gadsden extension (see p. 288 herein); (10) the West Nashville extension (see p. 318 herein).

**Declaration of power to borrow money, issue bonds and Mortgages.**—WHEREAS, The railway is fully authorized and empowered to borrow money for its corporate purposes, and to execute bonds therefor, and to secure the payment thereof by mortgage or pledge of its property and income, and to issue bonds in lieu of, or in exchange or substitution for, or in payment of any of the issues of bonds secured by mortgages upon the said main line and upon the several connecting lines or branches, or any of them, or upon any of the lines of railroad owned or operated by it, and on such future line or lines, extensions or branches, as shall hereafter be built or acquired by it; and is also authorized and empowered to mortgage the whole or any part of its road, connecting lines, branches, and all and singular its property of whatever kind, with its franchises, to secure any amount due or to become due; and,

For verification of powers above set out, refer to index.

**Stockholders' meeting; issue authorized of \$20,000,000.**—WHEREAS, The railway, in the due exercise of its said powers, did, by resolution, on the eighteenth day of February, 1888, call, and did in due form of law, cause a meeting of the stockholders of the said railway to be duly held in the city of Nashville, in the state of Tennessee, on the twenty-first day of March, 1888, which said meeting was duly adjourned to Wednesday, the twenty-eighth day of March, 1888, at which adjourned meeting, so held on said day, more than a majority of the stockholders of the said railway being present and voting in person or by proxy, the following resolutions were unanimously adopted. viz. :

**Resolution authorizing issue.**—*Resolved*, By the stockholders of the Nashville, Chattanooga and St. Louis Railway that, for the purpose of redeeming, purchasing, exchanging, paying and retiring the bonds of the Nashville, Chattanooga & St. Louis Railway, now outstanding and issued by this com-

pany, and those issued by the Duck River Valley Narrow Gauge Railroad Company, and for constructing or acquiring new railroad and for changing the gauge of the Duck River Valley Railroad and the Centreville Branch to standard gauge, and for the betterment, improvement and equipment of its line of railroad and branches, the president and secretary of the company are hereby authorized and directed to execute, in its corporate name, and to issue from time to time, as hereinafter provided, its corporate bonds, to consist of a series of coupon bonds, each for the sum of one thousand dollars (\$1,000), and bearing five per cent. per annum interest, to be designated first consolidated mortgage five per cent. gold coupon bonds, to the amount in the aggregate of twenty millions of dollars (\$20,000,000), payable April 1, 1928, in gold coin of the United States, not inferior to the present standard, with interest at five per cent. per annum, payable half yearly, on the first days of April and October, in like gold coin; of which issue the sum of ten million eight hundred and seven thousand dollars (\$10,867,000) shall be held to take up the present outstanding debt upon the several lines and branches of the company by redemption, purchase, exchange, or payment, on the terms to be provided in the mortgage; and of which issue the difference between the present average mortgage debt (being sixteen thousand six hundred and twenty and seventy-eight one hundredths dollars (\$16,620.78) per mile or thereabouts) and twenty thousand dollars (\$20,000) per mile upon the main line, and the several branches, being six hundred and fifty and twenty-one one hundredths miles, issued for and devoted to the change of gauge of the Duck River Valley Railroad and the Centreville Branch, and the betterment and improvement of the main line, and the several other lines and branches of the company, and for other legitimate purposes in the improvement and development of the company's property, of which the sum of one million five hundred thousand dollars (\$1,500,000) shall be certified, issued and delivered at once to the company, and no more, and the remainder of which may be issued from time to time, when duly authorized at a meet-



ing of the stockholders, and from which general issue further bonds may hereafter be certified and duly issued for new railroad, or newly acquired railroad, as provided in the mortgage hereinafter referred to, at the rate of twenty thousand dollars (\$20,000) per mile of constructed road, provided that of the bonds hereby authorized over and above those which shall be held for exchange or satisfaction of the ten million eight hundred and seven thousand dollars (\$10,807,000) of bonds now outstanding as a lien upon the company's property, the sum of one million five hundred thousand dollars (\$1,500,000) so above authorized shall be at once issued, certified and delivered to the company, without further vote of the stockholders; but no bonds beyond said sum of ten million eight hundred and seven thousand (\$10,807,000) dollars, and one million five hundred thousand dollars (\$1,500,000) shall hereafter be issued under said mortgage for newly acquired property or new construction or otherwise, without a vote of the stockholders of the company at a meeting first obtained.

For the purpose of securing the payment of said bonds the president and secretary are authorized and directed to execute in its corporate name and on its behalf and under its corporate seal and to deliver to the United States Trust Company of New York a mortgage or deed of trust, bearing date the second day of April, A. D. 1888, conveying by way of mortgage the main line of railroad of the company and all its connecting lines and branches, as now constructed and in operation as aforesaid, and all railroads owned, or which may be acquired or created by construction, purchase, consolidation, lease, or otherwise, by the company within and without the said State of Tennessee, subject to the exemptions in the mortgage hereinafter referred to contained, and all equipment now or at any time hereafter owned by the company for use upon said railroads so covered hereby within and without the said State of Tennessee, and all and singular the property of every name and nature, real, personal, mixed, acquired and to be acquired, in possession or expectancy, including the corporate and other franchises of the company, subject to the existing liens thereon, amounting to the sum of

ten million, eight hundred and seven thousand dollars (\$10-807,000).

*Resolved further,* That the form of bond and mortgage now presented be and the same is hereby approved with such changes or modifications, if any, as the board of directors may approve.

Of the \$20,000,000 bonds authorized to be issued as above, only \$6,233,000 of bonds have actually been issued at this writing.

**Directors also authorize issue.**—AND WHEREAS, The board of directors of the said railway has duly authorized and directed its president and secretary to execute and issue the said series of first consolidated mortgage gold bonds, for one thousand dollars each, numbered from one (1) upwards—payable in forty years with interest at five per cent., payable semi-annually on the first days of October and April—and to secure the same by the execution and delivery of this instrument; which bonds and coupons are substantially in the form following, to wit:

## UNITED STATES OF AMERICA,

### STATE OF TENNESSEE,

*Nashville, Chattanooga & St. Louis Railway First Consolidated Mortgage  
Five Per Cent. Gold Coupon Bond.*

No. ———

\$1,000.

The Nashville, Chattanooga & St. Louis Railway, for value received, acknowledges itself indebted to the United States Trust-Company of New York, or bearer, in the sum of one thousand dollars, which will be due, and which it will pay to the holder hereof, at its agency in the city of New York, on the first day of April, in the year 1928, in gold coin of the United States, not inferior to the present standard, with interest at the rate of five per cent. (5) per annum, payable at said agency, in like gold coin, semi-annually, on the first days of October and April, in each year, on presentation of the coupons for interest, hereto attached, when respectively due; which said coupons, when paid, are to be surrendered.

This bond is one of a series of not exceeding twenty thousand bonds of like amount, tenor, and date, numbered consecutively from one (1) upwards, securing in the aggregate a sum not to exceed twenty millions of dollars issued and to be issued by said railway, at a rate not to exceed twenty thousand dollars per mile of railroad at the time constructed, and covered by the mortgage hereinafter mentioned, and to be used in part for taking up by redemption, purchase, exchange, payment or otherwise its existing bonded indebtedness, on the terms

and pursuant to the conditions set out in the said mortgage, each bond and the coupons attached being equally secured by mortgage of even date herewith, duly executed and delivered by said railway to the United States Trust Company of New York, as trustee, and duly recorded, conveying all and singular, the main line of railroad and all connecting lines or branches, and such further lines, extensions or branches as may be hereafter constructed or acquired, upon the terms particularly set forth in said mortgage, and all appurtenant property-rights, franchises, and privileges now owned, or which may be hereafter acquired by the said railway, and subject to the exceptions therein contained as to future acquired property; subject, however, to certain prior mortgages on said main line, connecting lines and branches as now constructed, which are liens thereon and outstanding as security for the payment of certain issues of bonds, as specifically set forth and described in said mortgage, amounting in all to the sum of ten millions eight hundred and seven thousand dollars (\$10,807,000), and for the funding and discharge whereof, by exchange, payment, or otherwise, an equal amount of the bonds of this issue is to be reserved as provided in said mortgage, so that upon such funding and discharge of said prior bonds, the series of bonds whereof this is one shall be secured by a first mortgage upon said main line, connecting lines and branches, and each of them, and meanwhile shall be a first mortgage upon any others hereafter acquired, built or constructed, or any extension thereof, within or without the state of Tennessee, subject to the limitations and pursuant to the provisions contained in the said mortgage.

This bond may, at the option of the holder, be registered at the office of said railway, in the cities of Nashville or New York, and after such registration made, and noted by indorsement thereon, unless thereafter registered payable to bearer, will be payable only to such person as on such registry, noted by indorsement thereon, shall appear, from time to time, to be the last registered owner; but such registration shall not affect the negotiability of the coupons.

This bond shall not become obligatory until authenticated by the certificate indorsed thereon, duly signed by the trustee.

In testimony whereof, the said railway has affixed its corporate seal, and caused these presents to be signed by its president and secretary, at Nashville, in the State of Tennessee, the second day of April, one thousand eight hundred and eighty-eight.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

By ..... President.

..... Secretary.

[FORM OF COUPON.]

\$25.

No. —

The Nashville, Chattanooga & St. Louis Railway will pay to bearer, at its agency in the city of New York, in gold coin of the United States, on the — day of —, 18—, twenty-five dollars, being six months interest on its first consolidated mortgage bond No. —.

..... Secretary.



## [TRUSTEE'S CERTIFICATE.]

The United States Trust Company of New York certifies that the within bond is one of an issue of bonds, not to exceed in all twenty million dollars, referred to and described in a mortgage bearing date the second day of April, 1888, executed and delivered to it, as trustee, by the Nashville, Chattanooga & St. Louis Railway.

UNITED STATES TRUST COMPANY OF NEW YORK, *Trustee*,

By ----- *President*.

**What property transferred to trustee to secure bonds; main line.**—Now, therefore, in order to secure the punctual payment of said bonds and coupons, when respectively due and payable, to the persons and corporations who, from time to time, may have the right to demand such payment, without priority of one over another by reason of the dates of issue or negotiation of the bonds, or otherwise, and in consideration of the premises and the sum of one dollar (\$1) paid to it by the United States Trust Company of New York, trustee, the receipt of which is acknowledged, the said Nashville, Chattanooga & St. Louis Railway has granted, bargained, sold, assigned, released, conveyed, and confirmed, and by these presents does grant, bargain, sell, assign, release, convey, and confirm unto the said United States Trust Company of New York, as trustee, and to its successors in the trust, for the common and equal benefit of all lawful holders of said bonds or coupons: All and singular its said main line of railroad, extending from the city of Hickman, in the county of Fulton, State of Kentucky, to the city of Chattanooga, in the county of Hamilton, State of Tennessee, including the Northwestern and Chattanooga Divisions of said main line, and passing through the county of Fulton, in the State of Kentucky, and the counties of Obion, Weakley, Carroll, Humphreys, Cheatham, Dickson, Benton, Davidson, Rutherford, Bedford, Coffee, Franklin, and Hamilton, in the State of Tennessee, the county of Jackson, in the State of Alabama, and the county of Dade, in the State of Georgia;

For main line, see pp. 1-76 herein.

**Same. Sparta or McMinnville Branch.**—Also its said line commencing at Tullahoma, in the county of Coffee, State of

Tennessee, and running thence, through the counties of Coffee and Warren, to Sparta, in the county of White, in said State, known as the McMinnville Branch;

For Sparta or McMinnville Branch, see pp. 166, 192, 199 herein.

**Same. Fayetteville Branch.**—Also its said line commencing at Decherd, in the county of Franklin and State of Tennessee, and running thence to Fayetteville, in the county of Lincoln, in said State, and known as the Fayetteville Branch;

For Fayetteville Branch, see p. 152 herein.

**Same. Huntsville Branch.**—Also its said line commencing at Elora, in the county of Lincoln and State of Tennessee, and running thence to Huntsville, in the State of Alabama, and known as the Huntsville Branch;

For Huntsville Branch, see pp. 152, 214 herein.

**Same. Tracy City Branch.**—Also its said line commencing at Cowan, in the county of Franklin, State of Tennessee, and running thence through the counties of Franklin and Marion, to Tracy City, in the county of Grundy, in said state, and known as the Tracy City Branch;

For Tracy City Branch see p. 277 herein.

**Same. Jasper Branch.**—Also its said line commencing at Bridgeport, in the county of Jackson, in the State of Alabama, and running thence to Dunlap, in the county of Sequatchie, in the State of Tennessee, and known as the Jasper Branch;

For Jasper Branch see pp. 264, 266, 269 herein.

**Same. Inman Branch.**—Also its said line commencing at Victoria, a point on the said Jasper Branch, and running thence to Inman, all in the county of Marion and State of Tennessee;

For Inman Branch see pp. 264, 266, 269, herein.

**Same. Lebanon Branch.**—Also its said line commencing at Nashville, in the State of Tennessee, and running thence to Lebanon, in the county of Wilson, in said state, known as the Lebanon Branch;

For Lebanon Branch see p. 129 herein.

**Same. Centreville Branch.**—Also its said line commencing at Dickson, in the county of Dickson, state of Tennessee, and

running thence through the county of Hickman, in said state, to the line of Lewis county in said state, and known as the Centreville Branch;

For Centreville Branch, see p. 227 herein.

**Same. Bon Air Branch.**—Also its said line (being an extension of the McMinnville Branch, hereinbefore described), commencing at Sparta, in the county of White, state of Tennessee, and running thence to Bon Air, in said county and state, known as the Bon Air Branch;

For Bon Air Branch, see p. 199 herein.

**Same. Duck River Valley, or Columbia Branch.**—Also its said line commencing at Columbia, in the county of Maury and state of Tennessee, and running thence through the county of Marshall, to Fayetteville, in the county of Lincoln, in said state of Tennessee, and known as the Duck River Valley Branch;

For Duck River Valley Branch, see p. 250 herein.

**Same. Shelbyville Branch.**—Also its said line commencing at Wartrace, in the county of Bedford, in the state of Tennessee, and running thence to Shelbyville, in said county, known as the Shelbyville Branch.

For Shelbyville Branch, see p. 286 herein.

**Same. West Nashville Branch.**—Also its said line commencing at a point on the main line in the vicinity of Nashville, Tenn., and running thence to West Nashville in said state, known as the West Nashville Branch.

For West Nashville Branch, see p. 318 herein.

**Same. Other properties, exceptions, after-acquired property.**—And also all railroads and railroad property which the said railway now owns or may hereafter acquire, build or create within or without the State of Tennessee, whether by purchase, construction, consolidation, or otherwise, except as hereinafter particularly stated in sections first and fifth, and also including all double or additional tracks which said railway shall acquire by purchase, lease, construction, consolidation, or otherwise, in whatever state the same may be situated; and all rights of way, depots, depot grounds, and lands used in



connection with the operation and maintenance of said railroad, railroads, divisions, branches, or extensions, or any thereof now owned by said railway, or hereafter in anywise by it to be acquired, subject as aforesaid, and all side tracks, spur tracks, switches, or turnouts, connected with and appurtenant to said railroad, or railroads, main line, divisions, or branches thereof, and all bridges, viaducts, culverts, fences, and other structures and all depots, station houses, engine houses, car houses, freight houses, wood houses, coal houses, and other buildings, and all machine shops and other shops now held or acquired, or hereafter to be acquired or held by the railway, its successors or assigns, or either of them, for use in connection with such railroad or railroads, divisions or branches, or any thereof, as it may hereafter acquire, within or without the said State of Tennessee, except as hereinafter mentioned, and including also all locomotives, tenders, cars, and other rolling stock and equipment of whatever name and nature, and all machinery, tools, implements, fuel, supplies, and material for constructing, maintaining, operating, repairing, and replacing the same, acquired and to be acquired, or any part thereof, including also all revenues, rates, tolls, as well as all money or income arising or to arise from said railroad, or other the premises hereinbefore expressed to be conveyed, or any of them, or any part thereof; and also all corporate and other franchises, rights, privileges, and immunities now owned, held, and enjoyed by, or conferred upon the said railway within or without the said State of Tennessee, except as hereinafter mentioned, connected with or related to the said railway or railways, acquired or to be acquired, constructed or to be constructed, and necessary to the full, complete and convenient use, operation, and enjoyment of the said above described premises and property or any part thereof, it being the intention hereof to include herein, generally, all the property of the said railway, real, personal, and mixed, in possession and in expectancy, now owned or hereafter to be in anywise acquired within and without the said State of Tennessee, together with all and singular the tenements, hereditaments, rights, members, easements and appurtenances

of the said railroad and premises hereinbefore expressed to be conveyed, or any of them, or any part thereof, belonging or in anywise appertaining thereto, or at any time held or enjoyed herewith, and the reversion and reversions, remainder and remainders, tolls, incomes, revenues, rents, issues and profits thereof, and also all of the estate, right, title and interest, property, possession, claim and demand whatsoever, as well in law as in equity, of the railway in and to the same, except as hereinafter provided.

For examination of property acquired since the execution of this mortgage, see notes to similar heading in first part of this mortgage.

To have and to hold, all and singular, the above mentioned and described railroads, extensions, branches, rolling stock, franchises and other property, and all other the premises and property hereinbefore expressed and hereby conveyed, with the appurtenances, unto and to the use of the said United States Trust Company of New York, and its successor or successors in said trust—upon and for the uses and purposes, and upon and subject to the conditions and stipulations, hereinafter expressed and declared, as follows, viz.:

**FIRST.—Bonds to be issued, how and for what; restrictions.**  
—The railway has prepared and made ready for execution the said twenty thousand bonds for one thousand dollars each, and the railway agrees with the trustee, its successor or successors in this trust, that no amount of bonds in excess of twenty million dollars (\$20,000,000) shall be issued under this mortgage in any event whatever, nor shall any bonds be issued hereunder, except to take up said outstanding bonds, now liens as hereinbefore stated upon the mortgaged property, or some part thereof, or for the difference between the present average mortgage indebtedness of the said entire line and branches, per mile, and twenty thousand dollars per mile, or except at the rate of twenty thousand dollars per mile of completed railway hereafter to be constructed, purchased or acquired, all of which is hereinafter particularly set forth.

1. It is further agreed that said trustee shall, upon the execution, delivery, and recording of this instrument, hold and

retain in its hands bonds to the amount of ten million eight hundred and seven thousand dollars (\$10,807,000), being the aggregate amount of the outstanding bonds of the railway secured by the several mortgages herein-  
Underlying  
bonds to be  
taken up.
before referred to, which bonds so outstanding, and each of them, the railway agrees to take up by exchange, payment or otherwise, at or before maturity; and it is further agreed that no other or further bonds shall at any time hereafter be issued under the said mortgages hereinbefore described, under which bonds are so outstanding, to the amount of \$10,807,000, or under any of them; and it is further agreed that whenever any owner or holder of said bonds, or any of them, or the said railway, shall present and deliver to the trustee any of the said bonds now outstanding and unpaid, and secured by the mortgages or deeds of trust hereinabove mentioned, with all coupons not then due, being liens upon the main line or any of the branches or divisions, or any part of the same, as hereinabove described, and included in said amount of \$10,807,000, the trustee shall receive the same and deliver, in place thereof and in exchange therefor, bonds issued hereunder and secured hereby, having a par value equal to the par value of the bonds so delivered to it, with all coupons not then due.

All bonds secured by said existing mortgages or deeds of trust, which shall be so retired or replaced by payment, purchase, exchange or otherwise, by bonds provided to be issued hereunder, shall be delivered to the trustee, and be by it duly canceled; *Provided, however,* Such trustee may hold  
Underlying  
bonds, how  
exchanged for  
new, disposi-  
tion.
any bonds of any such series, so delivered up, uncanceled until all the bonds of that series shall have been retired or replaced as aforesaid, or until, in the judgment of the trustee, it is no longer necessary so to do, in which case said bonds so delivered to the trustee, and uncanceled as aforesaid, shall be held by the trustee until canceled, as further security to the holders of the bonds issued hereunder in exchange for the same and as collateral thereto, and also for the benefit and the protection of the railway, and thereupon the mortgages or deeds of trust given to secure the pay-



ment of the bonds so delivered up shall remain in full force and effect, in all respects, until the bonds, to secure the payment of which said mortgages or deeds of trust were originally executed, shall have been fully canceled, and shall retain all their priorities, rights, benefits, privileges and legal incidents; and the trustee may, as the holder of such uncanceled bonds, enjoy all and singular the rights of a bondholder thereunder.

But whenever all of the bonds of any series, secured by said mortgages or deeds of trust, shall have been delivered to the trustee, it shall be the duty of the trustee to cancel or procure the cancelation of the same, unless the railway shall request to have them kept alive for the purpose of perfecting its title to any of the property upon which the same were secured, in which event it is agreed that the same may be used by the railway for the purpose of perfecting, through foreclosure or otherwise, its said title; *Provided, however,* That the lien hereof is in no event to be displaced or in any manner affected by any such proceedings; but any and all title that the railway may acquire through or by means of any proceeding upon such mortgages or deeds of trust shall be subject and subordinate to the lien of these presents; and the railway hereby covenants and agrees that any title it may so acquire shall be by it conveyed at once to the trustee by a proper deed of further assurance.

2. It is further agreed that, for the purpose of affording the railway the necessary means for the betterment and improvement of the main line and the several hereinbefore described lines and branches as the same and each of the same now exist, and for the other legitimate purposes of the railway in the improvement and development of its property, bonds shall be duly certified and issued to the railway by the trustee, as hereinafter provided, for the difference, as near as may be, between sixteen thousand six hundred and twenty and seventy-eight hundredths dollars (16,620.78) per mile, the present average mortgage debt per mile upon the entire main line and branches, and twenty thousand dollars per mile; that is to say, bonds to the amount of three

thousand three hundred and seventy-nine and twenty-two hundredths dollars (\$3,379.22) per mile upon such entire line and branches, viz.: upon six hundred and fifty and twenty-one hundredths miles, such entire mileage, may be so issued and delivered, amounting in all to two thousand one hundred and ninety-seven (2,197) bonds, and to the sum of two million one hundred and ninety-seven thousand dollars, of which fifteen hundred (1,500) bonds, amounting to one million five hundred thousand dollars (\$1,500,000), shall be issued and delivered to the railway at once, which said amount of bonds, and all of the same and the proceeds thereof, the said railway hereby agrees shall be devoted and applied to the betterment, improvement, or equipment of the main line, branches, and property mortgaged hereby, or for the change of gauge of the Centreville Branch and of the Duck River Valley Narrow Gauge Railroad, or for the legitimate purposes of the railway in the improvement and development of the property hereby mortgaged, and of which amount further bonds, within the limit hereinabove fixed, may be issued when authorized by the stockholders, which, and the proceeds of which, shall be devoted to like purposes or some of them.

3. It is further agreed that whenever any additional mile or miles of single track railroad shall be built, acquired, or created by the railway, by purchase, construction, consolidation, or otherwise, evidence of which to said trustee shall be the affidavit of the president and that of the chief engineer of the said railway, showing, among other things, the exact length of the railroad or railroads so built, acquired or created, and where the same begins and ends; and in case no lien by mortgage exists thereon, and in case this instrument will become a first lien thereon, then upon the recording of this mortgage or deed of trust as required by the laws of the State or States in which any part of said additional railroad shall be situate, said trust company, when authority therefor shall have been obtained at any meeting of the stockholders, shall, upon the request of the board of directors of the railway, certify and deliver to the said railway a

For purchase  
of additional  
railroads and  
extensions,  
How.

further issue of bonds hereunder, at the rate of, but in no event exceeding the amount of twenty thousand dollars per mile for each mile of single track railroad so built, acquired or created, exclusive of sidings, but no additional bonds shall be issued upon any portion thereof for double track ; *Provided*, that if the last section of any completed line, extension or branch shall be less than one mile in length, bonds shall be delivered to the railway therefor at the proportionate rate of twenty thousand dollars for a completed mile.

It is further agreed that if any such additional mile or miles of track which shall so be built, acquired, or created, shall be encumbered by any mortgage, or other lien, which remains unsatisfied, so that bonds secured by this mortgage cannot be issued upon each mile of the same, or part thereof, at the rate herein provided, as a first mortgage lien, then the lien of this instrument shall not attach to such new road, branch or extension so incumbered; *Provided, however*, That when such lien or encumbrance be removed, so this instrument can be made a first lien thereon, then, on recording the same as hereinbefore provided, the lien hereof shall attach, and bonds shall be issued thereon at the said rate of twenty thousand dollars per mile, as hereinabove is specifically provided.

New roads or  
extensions to  
be clear of  
incumbrances.

**SECOND.—Railway company to retain possession of property until default.**—Until the railway, or its successors, shall make default in the payment of the principle or interest of the said bonds, or some one of them, according to the tenor thereof, or shall make default or breach in the performance or observance of some condition, obligation or requirement by the said bonds or by this present deed imposed on the railway, or its successors, in reference to the said bonds, the railway, and its successors, shall be permitted to possess, manage, operate, and enjoy the said mortgaged property with its franchises and appurtenances, as conveyed hereby, and to receive, take, and use the income and profits thereof in the same manner and with the same effect as if this deed had not been made.



**THIRD.—Trustees to release mortgage on certain property, equipments, etc., when.**—The trustee shall have full power, and it shall be its duty, upon the written request of the railway, to convey, by way of release or otherwise, to the person or persons, corporation or corporations, designated by the railway, any lands acquired or held for the purposes of stations, depots, shops, or other buildings, and any lands or other property which in the judgment of the railway shall be unnecessary for further use in connection with the said railway, or which may have been held for the supply of fuel, gravel, or other material; and also to convey as aforesaid, on like request, any lands not occupied by the track, which may become disused by reason of a change of the location of said track, or of any stationhouse, depot, shop, or other building connected with the said railway lines or branches, and such land occupied by the track or tracks thereof and adjacent to such stationhouse, depot, shop, or other building, as the railway may deem it expedient to disuse or abandon by reason of such change, and to consent to any such change, and to such other changes in the location of the track or depots, bridges, or other buildings or structures, as in the judgment of the railway shall have become expedient, and to make and deliver the conveyances necessary to carry the same into effect; and the trustee shall also have full power to allow the railway from time to time to dispose of, according to its discretion, such portions of the equipment, machinery, and implements at any time held or acquired for the use of the railway as may have become unfit for such use, the railway replacing the same by new; and all the property required for replacing, or acquired in lieu of any of the property conveyed under the provisions of this article, shall immediately be and become, without any other act of conveyance upon the part of the railway, subject to the operation and lien of these presents.

**FOURTH.—Taxes, who to pay; railway to execute additional title papers, when.**—The railway agrees well and truly to pay and discharge all taxes lawfully levied upon said railroad and branches, franchises, and property hereinbefore de-

scribed and hereby mortgaged, from time to time, when the same shall be due respectively, and to keep the same in good order and repair at its own cost, and to do all things necessary to be done to keep valid the lien hereby created upon the said mortgaged property, and every part of the same, and from time to time to execute such other conveyances and to do such other acts and things as may be necessary or reasonably required to improve or make perfect the lien acquired by this instrument.

**FIFTH. Lien attaches to after-acquired tracks, when; limitation.**—The lien of this instrument shall attach to such additional mile or miles of constructed track as shall hereafter be built, acquired, or created by the railway as shall be unencumbered, and on which bonds of this series may be duly authorized to be issued, as hereinabove provided, and to such equipment or other property appurtenant thereto as shall be hereafter acquired; but whenever such additional number of miles of railroad shall have been so built, acquired, or created, and covered by this instrument, so as to entitle the railway (including the number of bonds at the time in the hands of the trustee to take up bonds secured by mortgages then outstanding) to the entire amount of bonds to be issued hereunder, viz., twenty thousand bonds of one thousand dollars each, then no further railroad extension, branch, branches, or property, nor any equipment properly belonging thereto, shall be covered hereby.

1. **Number of bonds issued.**—At this writing, only \$6,233,000 of bonds, of the \$20,000,000 authorized to be issued under this mortgage, have been issued.

2. **After-acquired property.**—For enumeration of properties acquired since the execution of this mortgage, see notes to similar heading in first part of this mortgage.

**SIXTH.—On default trustee to take charge and operate, how.**—Whenever the railway or its successors shall make default in payment of the coupons on any of its bonds after due presentation and demand thereof, and such default shall continue for a period of six months; or shall make default or breach in the performance or observance of any such other

condition, obligation or requirement mentioned herein, and such default shall continue for the period of six months, then, and in either of such cases, it shall be lawful for the trustee, for the time being, and upon the written request of the holders of a majority of the bonds outstanding, such trustee shall enter on and take and possess all and singular the railroads, property and rights hereby conveyed, and work and operate the same by its superintendents, managers, receivers, servants, attorneys or agents, and conduct the business thereof, and make, from time to time, such repairs and replacements and such useful alterations, additions and improvements therein and thereto as may seem to it to be judicious or convenient, and collect or receive all tolls, freights, revenues, incomes, rents, issues and profits thereof; and, after deducting and defraying the expenses of working and operating the same, and of all the said repairs, replacements, alterations, additions and improvements, and all payments which may be made for charges or liens of any kind prior to the lien of these presents, and all other expenses and outgoings whatsoever incurred in relation thereto, as well as just compensation for its own services and for the services of such attorneys and counsel, and all other agents and persons, as may have been by it employed, the trustee shall apply the moneys arising from such collections, as aforesaid, in or toward the payment of interest on all the said bonds in the order in which the said interest shall have become due, ratably, to the persons entitled to such interest; and, after paying all interest which shall have become due, shall apply the residue of said moneys in or toward the payment of the principal of such of the said bonds as may be at that time outstanding and unpaid, ratably, and without discrimination as to persons. And if, after satisfaction thereof, a surplus shall remain, it shall pay over such surplus to the railway, its successors or assigns, or as any court of competent jurisdiction shall order.

**SEVENTH.—Mortgage to be foreclosed, when ; all bonds fall due on default, when.**—In case the railway shall fail, for the period of six months, to pay the coupons for the semi-annual



interest on any of the bonds issued under and secured by this mortgage, after due presentation and demand thereof, the principal of all of said bonds shall, at the option of the holders of a majority in the interest of said bonds then issued and outstanding, forthwith become due and payable, and the trustee shall on such option being so expressed in writing declare the same to be so due and payable, and in such case of default in the payment of interest for the period of six months, or in case the railway shall fail to pay any of said bonds after maturity, according to the tenor and effect thereof, or after they become due as hereinabove provided, the lien hereby created for the security and payment of said bonds may be at once enforced, and the trustee, its successor or successors may, and upon the written request of the holders of a majority in interest of said bonds then outstanding, and on the receipt of satisfactory indemnity, shall, forthwith, with or without entry, as aforesaid, sell and dispose of all and singular the premises and property hereby conveyed, or any part thereof, at public auction, in the city of New York and State of New York, or in the city of Nashville and State of Tennessee, in the discretion of the trustee, at such times as it may appoint, first giving notice of said sale and of the time, place, and terms thereof, by advertisement for the term of four weeks in some daily newspaper published in said city of New York, and also in some daily newspaper published in the said city of Nashville. The trustee shall have power to adjourn said sale from time to time, at its discretion; and if adjourned to another date, it may make said sale at the time appointed without further notice by advertisement; and the trustee shall have power to make and deliver to the purchaser, or purchasers, at said sale, good and sufficient deeds of conveyance of the property sold, and the receipt of the trustee shall be a sufficient discharge to the purchaser, or purchasers, of the premises which shall be sold as aforesaid, for his or their purchase money, and such purchasers shall not, after the payment of such purchase money, be liable to see to its application upon or to the purposes or trusts of these presents, or to be in any manner answerable for any loss, misappli-

cation, or non-application of such purchase money, or any part thereof, or be obliged to inquire into the necessity or expediency of or for any such sale; or the trustee may, at its election, institute and maintain foreclosure proceedings in any court of competent jurisdiction, for the appointment of a receiver or for the sale of said main line, branches, and mortgaged property, appurtenances, rights, privileges, and franchises for the payment of said bonds, or such of them as may remain unpaid, and all unpaid interest due thereon, and for the distribution of the proceeds of any such sale amongst the holders and owners of said bonds and coupons, according to their rights and equities, respectively; *Provided*, That if the railway at any time before such sale, and before said bonds shall have become due by their terms, or by reason of any declaration of the trustee, as hereinabove provided for, shall pay all the interest then matured thereon, or due thereon, and all unpaid taxes, if any, compensation of the trustee, costs of the proceedings in court and all legal and proper charges in favor of the trustee, its agents or attorneys, a sale on account of such previous failure shall not be made, and said proceedings for a sale, or said foreclosure proceedings, shall be dismissed.

**EIGHTH. Bondholders may purchase at sale.**—It is hereby further understood and agreed that it shall be lawful for the bondholders so demanding such sale, or a majority of them, and all holders of bonds secured hereby who may unite with them, to purchase, at any such sale, said roads, branches, and other property, appurtenances, rights, franchises, and privileges, but the cost of the foreclosure proceedings, compensation of the trustee, attorney's fees, and all other proper costs and charges are first to be paid out of the proceeds of the sale, and the remainder of said proceeds shall be applied in payment of the unpaid interest and principal of the said several bonds, ratably, but without any preference of principal over interest or of interest over principal, and without discrimination as to persons; and if, after paying in full said bonds and interest, there shall be any money remaining in the hands of the trustee,

it shall pay the same to the railway, its successors or assigns, or as may be ordered by any court having jurisdiction. In the event of such purchase by such bondholders, and after the payment, out of the proceeds of sale, of said costs, compensation of trustee, and fees of attorneys, they shall be allowed credit, as so much cash paid, for so much of said purchase money as shall be a proper *pro rata* share to which the bonds and coupons held by such purchasers shall be entitled.

**NINTH.—In case of foreclosure, railway waives certain rights.**—It is agreed that, in case of any default in the payment of said bonds secured hereby, or of any interest thereon, or in the observance of any of the covenants, conditions, provisions, or agreements herein contained, on account of which a sale by foreclosure, or otherwise, could be made, the railway will waive, and hereby waives, the benefit of any stay, appraisalment, and redemption laws, or of any laws regulating sales under mortgage foreclosures in the States of Tennessee, Kentucky, Alabama, or Georgia, now existing or which may hereafter exist.

**TENTH.—Mortgage becomes void and lien released, when.**—It is further agreed, that upon the payment by the railway, at any time when due, of the said bonds issued under and secured by this mortgage or deed of trust, and of all interest matured or due thereon, before a foreclosure sale, as hereinbefore provided, and the compensation and expenses of the trustee, and other proper charges, this deed shall become void, and the estate and title hereby granted shall revert to and vest in the company, its successors and assigns, without other conveyance thereof.

**ELEVENTH.—Majority bondholders, rights of, trustee.**—The action of the trustee herein in regard to enforcing to any extent the lien created by this mortgage or deed of trust, either by taking possession, or by sale at auction, or by resort to judicial proceedings, or otherwise, or in declaring the principal of the bonds to be due, or in reversing such declaration, or otherwise, shall be at all times subject to the control of a



majority in amount of the holders of said bonds, then issued and outstanding, their wishes being expressed in writing to the trustee, whose action shall be at all times subject to the control of a majority in amount of the holders of said bonds, as herein provided. The trustee shall be under no obligation to recognize any person, firm or corporation, as a holder of bonds secured hereby, or entitled to the benefits hereof, who shall not produce the said bonds, or otherwise satisfy the trustee that he is the holder thereof, and indemnify and save harmless the trustee for all liability and loss for which it may become liable or responsible on proceeding to carry out such request or demand.

**TWELFTH.—Trustee may resign or be removed, how; successor, how chosen.**—It is further agreed that the trustee hereby accepts the aforesaid trusts and agrees to execute the same, upon the following terms and conditions, which are mutually agreed to by the parties, viz.:

The trustee, its successor and successors, may resign or discharge itself, or themselves, of the trusts created by these presents, by notice to the railway in writing, three months before such resignation shall take effect, but such resignation may take effect after shorter notice, if the holders of a majority of the bonds then outstanding, so consent; that the trustee shall be answerable for gross negligence and willful defaults only; that the trustee may employ or advise with legal counsel, and that the proper expenses thereof and all personal expenses of the trustee, including its compensation, shall be paid by the company as they are incurred, or otherwise, out of the trust estate on which they are hereby charged; and it may employ agents or attorneys in fact, to act for it, whenever required to act.

The trustee may be removed by a vote of a majority in interest of the holders of the bonds secured hereby, issued and outstanding at the time of said vote, the said vote to be taken at a meeting of the bondholders, and attested by an instrument duly executed by all of the persons so voting at such meeting,

for such removal, and the rights of such persons so to vote at such meeting being proven by the affidavit of the chairman and secretary of said meeting; or the trustee may be removed by an instrument or instruments in writing, signed by the holders of a majority in interest of said bonds, such instrument being duly acknowledged and accompanied by the affidavit of the respective signers thereof, and naming the number of bonds of which they are respectively the holders.

And it is further agreed that, in the event of a vacancy in the trust, or of the disability or failure of the trustee, its successor or successors, for any cause, to act as such trustee, the owners and holders of a majority of the bonds secured hereby, then issued and outstanding, may, by an instrument in writing, duly executed by them respectively (which instrument shall be recorded in the offices in which this mortgage is required by law to be recorded), appoint some competent successor or successors to said trustee; and, in the event of their failure or refusal to do so, it shall be lawful for the circuit court of the United States, sitting in any district in the State of Tennessee, having jurisdiction, after notice being given by publication, twice a week for four successive weeks, in some newspaper published in the city of New York and in some newspaper published in the city of Nashville, of an intention to apply for such appointment, to appoint such successor on the nomination of holders of not less than one-fourth of the bonds secured hereby, or, in the event of their failure to nominate, then on the nomination of the railway, and the successor or successors, in either such manner appointed, shall possess all the powers and incur all the obligations of the said trustee herein named; and, in case of such appointment, the railway covenants to make all such deeds and other instruments as shall be necessary to enable the party so appointed to execute the trusts hereby created as fully and completely as if such appointed party had been originally the trustee.

In witness whereof, the parties hereto have caused their respective corporate seals to be hereunto affixed and the same

to be subscribed by their respective presidents and secretaries, the day and year first above written.

THE NASHVILLE, CHATTANOOGA & ST. LOUIS RAILWAY,

[SEAL.] By J. W. THOMAS, *President*.

Attest: J. H. AMBROSE, *Secretary*.

UNITED STATES TRUST COMPANY OF NEW YORK, *Trustee*,

[SEAL.] By JOHN A. STEWART, *President*.

Attest: H. L. THORNELL, *Secretary*.

1. **Mortgage, where registered.**—The foregoing mortgage was properly acknowledged, and registered in the following counties and states:

**In Tennessee.**—Davidson county, April 14, 1888, in book 111, p. 379; Wilson county, book "S S," p. 346; Cheatham county, book 2, p. 436; Lewis county, book 2, p. 218; Bledsoe county, book "V," p. 2; Wayne county, book 2, p. 8; Obion county, book "R," No. 2, p. 519; Weakley county, trust book "O," p. 395; Carroll county, mortgage book "K," p. 500; Bedford county, trust deed book 5, p. 455; Grundy county, trust book 2, p. —, noted in book 1, p. 30; White county, book 28, p. 435; Sequatchie county, book "A," p. 364; Benton county, book "C C," p. 561; Humphreys county, book "D," p. 358; Hickman county, book 3, p. 523; Dickson county, book "U," p. 92; Rutherford county, book "D D," p. 517; Franklin county, trust book 4, p. 49; Coffee county, book 4, p. 2; Warren county, trust book 1, p. 479; Lincoln county trust book 8, p. 279; Marion county, book "R," p. 193; Maury county, book "R," vol. 3, p. 36; Marshall county, trust book "D," p. 324; Hamilton county, book "J," vol. 3, p. —; Moore county, book of mortgages, No. 4, p. 30.

**In Kentucky.**—Fulton county, in book No. 6 of mortgages, on April 18, 1888.

**In Alabama.**—Etowah county, mortgage record 50, p. 1, also in book 50, p. 10; Marshall county, deed record, No. 5, p. 523, also in book 7, p. 7; Madison county, mortgage book 28, p. 500, also in book 62, p. 65; Jackson county, in mortgage record 19, p. 3, also in book 35, p. 235; Limestone county, vol. 29 of mortgages, p. 35; also in book 61, p. 40.

**In Georgia.**—Dade county, deed book "J," p. 237 of superior court, also in book "M," p. 516; Floyd county, book "K-L" of mortgages, p. 301, also in book "P-1," p. 56; Bartow county, book "M" of mortgages, p. 281, also in book "N," p. 489.

2. **Other mortgages (branch).**—The foregoing mortgage is the only one covering the entire system of the Nashville Chattanooga & St. Louis Railway. Additional mortgages exist on many of the individual branches, as for instance the Sparta Branch, Lebanon Branch, etc., but as these are referred to in the foregoing mortgage, showing the amounts thereof, a further reference is deemed unnecessary. The bonds secured by these mortgages will be taken up when due under the provisions of the foregoing one.

3. **Same; Western & Atlantic income bonds.**—After the lease of the



Western & Atlantic Railroad from the State of Georgia, the Nashville, Chattanooga & St. Louis Railway mortgaged its entire leasehold interest in said road, properties, etc., together with \$500,000 of bonds of the State of Georgia, deposited with the treasurer of said state in compliance with the terms of the lease act, to secure an issue of \$650,000 of bonds known as its "Western & Atlantic Railroad income bonds," given to reimburse itself for that amount of money expended by it in the renewal and repair of the bridges, trestles, tracks, depots, etc., on that road.

## PART II.

### GENERAL POWERS OF N., C & ST. L. RY. IN TENNESSEE, ALABAMA, GEORGIA, AND KENTUCKY.

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Since the passage of the original acts incorporating the Nashville, Chattanooga & St. Louis Railway, and the various branches forming its present system, many acts of the several states through which the roads pass have been enacted, considerably enlarging these powers. Amendments to the original charters have been made, as well as numerous general laws enacted, which enlarge the powers already conferred.

In the succeeding pages will be found, in alphabetical order, the general powers of the corporation in the respective states as now possessed.

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#### CHAPTER L.

##### ABANDONMENT—BILLS, NOTES, ETC.—ACKNOWLEDGMENT— AGREEMENT—ALTER GAUGE.

**Abandonment.**—[See *Charter, forfeiture of.*]

**Accept, bills, notes, etc.**—Railways are created for special purposes, and may resort to any legitimate means necessary and proper to carry out those purposes, unless prohibited by its charter or the general law. Hence, it may contract debts within the scope of its powers, and may make provisions for their payment by drawing, indorsing or accepting bills and notes. 6 Hum. (Tenn.), 516; 9 Hum. (Tenn.), 264; 11 Hum. (Tenn.), 22; 2 Cold. (Tenn.), 655; 2 Swan (Tenn.), 371; 7 Heis. (Tenn.), 288; 9 Heis. (Tenn.), 524, 533, Thompson on Corp. § 3989.

It is unnecessary to set out the laws of Alabama, Georgia, and Kentucky as to the above, inasmuch as the Nashville, Chattanooga & St. Louis Railway is a corporation of Tennessee only, and its actions in this regard must be controlled entirely by the Tennessee law.

**Acknowledgment.** [In Tennessee]. By Acts Tennessee, 1899, p. 364, ch. 187, the authentication or acknowledgment for record of a deed or other instrument executed by a corporation, whether it has a seal or not, was made good and sufficient when made substantially in the following form :

“ STATE OF ———, }  
COUNTY OF ———. }

“ Before me ———, the state and county aforesaid, personally appeared ———, with whom I am personally acquainted, and who, upon oath, acknowledged himself to be the president (or other officer authorized to execute the instrument) of the ———, the within named bargainor, a corporation, and that he, as such ———, being authorized so to do, executed the foregoing instrument for the purpose therein contained, by signing the name of the corporation by himself as ———.

“ Witness my hand and seal, at office, in ———, this ——— day of ———.”

[In Alabama.] By § 996 of the code of Alabama (1896) the following is the form of acknowledgment to be used in the state on conveyances of every description admitted to record:

“ THE STATE OF ———, }  
COUNTY ———. }

“ I (name and style of the officer), hereby certify that ———, whose name is signed to the foregoing conveyance, and who is known to me, acknowledged before me on this day that, being informed of the contents of the conveyance, he executed the same voluntarily on the day the same bears date. Given under my hand, this ——— day of ———, A.D. ———.

“ A. B., Judge,” etc. (or as the case may be).

[In Georgia.] [See form on p. 396–397 herein.]

[In Kentucky.] [See code Ky. (1894), § 501, *et seq.*]

**Agreements.**—[See also “Contracts.”] “All contracts and *agreements* authenticated by the president of the board shall be binding on the company without seal, or such other mode of authentication may be used as the company by its by-laws may adopt.” Nashville, Chattanooga & St. Louis Railway *Charter*, § 11, p. 8 herein.



*Deeds to real estate, etc.*, however, were required at common law to be under seal, and neither the above section of the charter, nor § 2478 of the code of Tenn. (M. & V.), changes this law as to such conveyances. In all such cases the *seal* of the company should be attached to make it valid. 10 Pick. (Tenn.), 460; [see also "Contracts."]

**Alter gauge.**—[In Tennessee.] There are no charter provisions of the Nashville, Chattanooga & St. Louis Railway, or amendments, on this subject, but, under the general laws, all railroads, whether chartered under special or general act, are allowed to adopt such gauge or gauges as they like, and to alter the same at pleasure. Acts Tenn. 1885, ch. 20, p. 67; code Tenn. (Shannon's), § 2414.

The branches of the Nashville, Chattanooga & St. Louis Railway that were chartered under the general acts of 1875 all have a clause on this subject. See sec. 34, p. 421 herein.

## CHAPTER LI.

## BONDS—BORROW MONEY.

[See, also, Mortgages.]

[In Tennessee.] **When and how bonds may be issued and subscribed for. May borrow money.**—There are no provisions in the charter, or amendments thereto, upon this subject, but it is a well established principle of law that, in the absence of statute to the contrary, a corporation may borrow money for any lawful purpose and issue negotiable bonds as security therefor. 77 N. C., 289; 75 Am. Dec., 574; Thompson on Corp., secs. 6050, 3988; code Tenn. (M. & V.), §§ 1251, 1704.

It cannot issue bonds, however, secured by mortgage, which are *never to mature*. *Ib.*

If the company has power to issue bonds, they will be valid, although the *mortgage* given to secure them may be void for want of authority in the company to execute the same, etc. The mortgage is merely collateral to the principal undertaking—is but an additional security for it, and its invalidity cannot, of course, affect the primary obligation to pay the debt. 75 Am. Dec., 574; Thompson on Corp., sec. 6062.

**Railways may issue by statute.**—Under the general laws of the State of Tennessee, railways have the power to borrow money and to issue bonds therefor, or for any other indebtedness or liability which they may incur, or may have incurred, in the exercise of their lawful purposes, and to secure the payment of such bonds, with the interest thereon, by a mortgage of the whole or any part of its railroad and equipments and other property and franchises, containing such provisions as their directors shall approve. Code Tenn. (M. & V.), § 1251; acts Tenn. 1871, ch. 69; Shannon's code, § 1510.

The above act supersedes the acts of Tenn. 1871, ch. 22; but see act itself.

**How and when bonds may be issued.**—Any railroad com-

pany in this state may issue bonds in such amounts, and bearing such rate of interest, not exceeding the legal rate of interest at the place where payable, as may be determined on by stockholders representing a majority of all the stock in the company, and may secure the payment of such bonds, principal and interest, by mortgage of the franchises, roadbed, superstructure, equipments, and property of every description of such railroad company. The mortgage above authorized shall not interfere with prior liens, especially the liens of the state in the existing mortgages in favor of the state. Code Tenn. (M. & V.), § 1276; Acts Tenn. 1870-71, ch. 116, § 1; (Shannon's Code Tenn., § 1541.)

**Same. May also issue income and debenture bonds.**—Railroad companies existing under the laws of this state, or of this state and any other state or states, whose original charter of incorporation was granted by this state, are empowered to issue bonds, and secure the payment thereof by mortgage upon their franchises and property in any state, or upon any part of such franchises and property, or to issue income or debenture bonds, and such guaranteed, preferred, and common stock as may be determined upon by the stockholders; *Provided*, The same be approved by the votes of the holders of three-fourths in amount of the entire stock of said company at a regular or called meeting of the stockholders of said company, and that sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper, of the time, place, and purpose of the meeting. Code Tenn. (M. & V.), § 1277; Acts Tenn., 1881, ch. 9; code (S.), 1542.

The supreme court has decided that this act did not repeal the special limitations imposed by acts 1877, ch. 72, upon power of consolidated railway companies to make mortgages. 4 Pick. (Tenn.), 140; see Acts Tenn., 1873, ch. 8, sec. 3-5.

**Same. May issue to pay for acquired lines, or guarantee bonds of lines so acquired.**—“Any and all railroad companies now or hereafter existing under the laws of this state, or of this state and any other state or states, whose charter of incorporation was or may be granted by this state, be, and they are



hereby, authorized and empowered to acquire the line or lines of any other railroad company, either in this state or in any other state or states, which may connect with and form parts and parcels, or branches or extensions, of the line of such company chartered by this state, or by this state and any other state or states; and are authorized and empowered to so acquire such branches or extensions by purchase, lease, or otherwise, and pay for the same by the issue of their own capital and bonds, or by guaranteeing those issued by the company whose line may be so acquired, purchased, or leased; *Provided, however*, That nothing in this act shall be construed so as to authorize the acquisition in any way by any corporation or company of parallel or competing lines." Acts Tenn. 1891, ch. 125, p. 274.

**Guaranteeing bonds of other roads (continued).**—All railroad companies of this state, and any other state or states, are authorized and empowered to . . . and to indorse and guarantee the bonds of any railroad company or companies in any state or states, whose original charter of incorporation was granted by the State of Tennessee; *Provided*, That the same be approved by the vote of three-fourths in amount of the capital stock of said company present and voting, either in person or by written proxy, at a regular or called meeting of the stockholders of said company; *And provided further*, That sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of the meeting. Code Tenn. (M. & V.), § 1275; Shannon's code, § 1540; Acts Tenn., 1881, ch. 9, sec. 2; Acts Tenn., 1891, ch. 61, p. 146. See 4 Pickle (Tenn.), 140.

**Railroad terminal companies.**—By sec. 39 of the charter of railroad terminal companies, railroad companies were authorized to guarantee their bonds. See p. 564 herein.

**May subscribe for bonds in other roads.**—Any railroad company created by and existing under the laws of this state, and any lessees of a railroad of such company, from time to time, may subscribe for or purchase the stock and bonds, or either, of any other railroad company or companies chartered

by or of which the road or roads is or are authorized to extend into this state, when their roads shall be directly, or by means of intervening railroads, connected with each other.

. . . Code Tenn. (M. & V.), § 1262; Shannon's code, § 1520), Acts Tenn., 1869-70, ch. 49, sec. 4.

**May issue bonds, generally.**—In addition to the foregoing acts it may be mentioned that under the general law all corporations for profit have the right to borrow money and issue notes or *bonds* upon the faith of the corporate property. Code Tenn. (M. & V.), § 1704, sub. § 7; Shannon's code, § 2054, sub. § 7.

**Power of railway to sell bonds at discount.**—In the absence of restraining statute *existing* corporations have the power to sell their bonds at less than their par value to pay debts and carry on its business. Thomp. on Corp., sec. 6056; 139 U. S., 417 [35, 229]; 123 N. Y., 91.

**Power of railway to pledge its own bonds.**—All corporations which have the power to issue bonds secured by mortgage may, doubtless, transfer the bonds and mortgage as *collateral security* for an indebtedness, even of a less value than the sum for which the bonds are issued, and which is secured by the mortgage. 64 Ala., 567; 84 N. Y., 190; 96 Ala., 238; Thomp. on Corp., sec. 6061; 11 Pick. (Tenn.), 136.

**Coupons.**—All coupons when severed from the bonds are *negotiable*, and pass by delivery. 20 Wall. (U. S.), 583, 589.

**Interest on coupons runs from date of demand and refusal.**—Thomp. on Corp., sec. 6113.

**Bond, dividends.**—See 87 Tenn., 406; see also "Dividends" herein.

**Innocent purchaser of coupons.**—The holder of negotiable coupons, who acquires them after maturity as collateral security for a pre-existing debt, takes them subject to all equities available against the party from whom he obtained them. 10 Pick. (Tenn.), 176.

**When barred.**—The statute of limitations commences to run against actions upon coupons when they have been detached from the bonds, and transferred to parties other than the

holders of the bonds, from the maturity of the coupons respectively. 20 Wall., (U.S.) 583; Thompson on Corp., § 6115.

**Coupons share pro rata in mortgage foreclosure, exceptions.**—"An interest coupon payable to bearer, detached from the bond, and owned by one party, is still a part of the mortgage indebtedness, and is secured by the lien of the mortgage, although the bond itself may be owned by another party. An assignment of the coupon carries with it, in equity, an assignment of that aliquot portion of the mortgage security which is represented by the coupon, and the holder of the coupon will be entitled to share *pro rata* with the holders of the residue of the mortgage debt, in the distribution of the proceeds of a sale foreclosing the mortgage." 40 Vt. 399; s.c. 94 Am. Dec. 413; 109 Mass. 88, 96;

"Where in such a case a third person, with his own money, takes up maturing coupons without the knowledge of the holders, it is a question of fact, to be determined upon the evidence, whether it is intended to be a payment or a purchase which leaves the coupons outstanding for his protection, so far as they will protect him under the principles already stated. 96 U.S. 659; 128 U.S. 416;

"Where the promoter of a corporation, who owned nearly all its shares, had placed a mortgage upon it to secure its negotiable bonds, and in order to preserve the credit of the company and avert disaster while its works were being constructed, gave notice that coupons might be presented for payment, and paid them as they were presented, and canceled part of them, and afterwards turned them over, partly canceled, to contractors who had advanced material in the construction of the works of the corporation, and the mortgage was afterwards foreclosed, and a question arose as to the right of the contractors, as intervening petitioners, to share in the proceeds of the sale, it was held that, after the promoter of the corporation had employed his own funds in the ostensible payment of the coupons which he had turned over to these contractors, thereby keeping up the credit of the bonds and enabling them to be floated and marketed, it would be inequitable to allow him to share *pari*



*passu* with the holders of the other bonds and coupons in the same series in the distribution; and that as he had transferred the coupons to the contractors after they were past due, they did not receive them subject to any protection which attaches to the assignee of commercial paper before maturity." Thompson on Corp. §6117, citing 128 U.S. 416; 99 U.S., 235.

See 10 Pick. (Tenn.) 176, as to who are innocent purchasers of coupons.

**Rate of interest on bonds.**—The rate of interest on bonds, lawful where made payable, are not usurious on their face, though interest be in excess of that allowed in this state. 87 Tenn., 781.

**Counties, towns, etc., may subscribe for stock, bonds, etc., in railroads, how.**—For method see Shannon's Code Tenn., §1542 *a*, *et seq.*

## CHAPTER LII.

## BRANCH ROADS—SIDE AND SPUR TRACKS.

**Definition of branch road.**—The definition of a branch road can depend neither upon its length nor its direction. The word “branch” in such connection is equivalent to “section” or “subdivision,” and is as applicable to a direct extension from the terminus as to an offshoot of the main road. A lateral road, however, is a road branching off from the side. 1 Elliott on Railroads, sec. 42; 20 Am. & Eng. R. R. Cases, 314; 66 Mo., 228; 86 Va., 618; 43 Am. & Eng. R. R. Cases, 617; but see Rorer on Railroads, p. 36.

[In Tennessee.] **Power of this company to construct.**—The right to construct branch roads may be said generally to depend upon charter provisions. Unless power to build them is conferred upon a company by its charter or the general laws of the land, either in express terms or by necessary implication, they cannot be constructed, and no power exists to condemn a right of way therefor. 12 Vroom (N. J.), 205; 1 La. Ann., 128; 9 La. Ann., 284; 20 Am. & Eng. R. R. Cases, 319; 79 Pa. St., 257; 56 Pa. St., 325, 305; 35 Md., 224; 3 Am. & Eng. R. R. Cases (annotated), 71; 95 Ala., 434.

The only provision in the charter of the Nashville, Chattanooga & St. Louis Railway upon this subject is to be found in sec. 22, p. 13 herein, which provides that “the said company shall have the right, when necessary, to construct the road, or any *branch* thereof, across or along any public road or water course; *Provided*,” etc. In addition, sec. 40 of the charter of the railway permits other corporations or individuals to construct branches to connect with this road, with permission of the legislature, upon certain terms therein set out.

A literal construction of the above sections, however, would hardly confer upon *this company* the right to construct branch

roads. It was evidently the intention of the legislature to do so, as the following act, passed subsequently, indicates:

“*Be it enacted*, That the Shelbyville Branch, and such other branches of the Nashville & Chattanooga road as may be made, shall have all the rights and privileges and shall be placed, in all respects, on the same footing with the Nashville & Chattanooga road; *Provided*, That nothing in this act shall be so construed as to diminish the liability of the stockholders of the company in any way.” Acts Tenn., 1849–50, ch. 266.

Whether this latter act gives the right to *construct* branches in the future or not, it, at least, clothes them, when lawfully constructed, with very valuable rights and privileges—namely, those of the Nashville, Chattanooga & St. Louis Railway.

Nothing, however, under the present law would prevent the company from *purchasing* branches after they are built, and, in some cases, before they are completed, if they are not competing lines and have the power to sell, either under their charter or the general law. See “Purchase of Roads” herein.

**May build branch roads, when.**—Under the general laws of the state of Tennessee, however, any railroad company operating a railroad, or any part of same, in Tennessee, or that may hereafter do so, shall have power to build or acquire lateral or branch lines of railroad, not to exceed fifteen miles in length, for any one of such lateral or branch roads, extending from its main stem in Tennessee to any mine or quarry, or into any mineral section of country tributary to such main stem, for the purpose of developing the mineral material resources of the country; and such railroads shall have power to condemn private property for use in the construction and operation of such lateral or branch roads; *Provided*, That private property shall not be taken therefor against the owner’s will, without condemnation thereof, as now provided by law in other cases, and such roads shall be as common carriers, subject to the same duties and restrictions as the main lines with which they connect. Acts Tenn., 1899, ch. 259, p. 587.

1. The second section of the above act provided that nothing therein should be so construed as to authorize the purchase or consolidation of,



or with, competing lines, or to relieve them from taxation on said branches.

2. For method of condemning, see "Eminent Domain" herein.

**Same.**—Under another act of Tennessee it is provided that "any railway company chartered under the laws of the state of Tennessee, and now operating, or which may hereafter operate any line of railway within this state, is granted authority and power to build lateral roads, not exceeding eight miles in length, extending from the main stem of said line of railroad to any mill, quarry, mine, manufacturing plant, or the bank of any navigable stream, without the making of any amendment to the charter of said railroad; *Provided*, Private property shall not be taken for the uses of such company, or the construction of such lateral branches, without condemnation thereof, as now provided by law." Acts Tenn., 1895, p. 314, ch. 152. Power to construct gives implied power to condemn. Elliott on R. R., sec. 42. The words "main stem" in the above act would doubtless be construed to apply not only to the main stem proper, but to all well established and important branches that were *originally* constructed under their own charter and subsequently purchased or leased by this company; as, for instance, the Northwestern Branch, the Centreville Branch, etc. These roads were originally the "main lines" of their respective companies. They were not purchased under a restricted authority to purchase *branches*, but under a broader authority to purchase *other railroads*. This being so, the authority conferred by the legislature to purchase and operate other roads would doubtless, by implication, constitute the roads so purchased a part of the main stem. As to the method of condemnation, and in whose *name* to be done, where the lateral road is to extend from a purchased or leased branch, see "Eminent Domain" herein.

**What charters may be amended so as to authorize branch roads.**—In this connection it may be added that all railroads chartered under the general laws of the State of Tennessee, may amend their charters so as to build branch roads. Acts Tenn., 1889, p. 303, ch. 158. It will be noticed, however,

that this act only applies to railways chartered under the general laws, and not to those chartered by special act, as was the Nashville, Chattanooga & St. Louis Railway.

For method of condemning see "Eminent Domain" herein.

**Right of others to construct branch roads to connect with Nashville, Chattanooga & St. Louis Railway.**—Section 40 of the charter, p. 23 herein, provides that "any individual or individuals, company or body corporate, with permission of the legislature of this state, may hereafter construct branches to unite with the Nashville and Chattanooga Railroad," and then proceeds to set out the terms and conditions upon which it may be done. For particulars see section 40 of charter and notes thereunder.

**May build branch roads to unite with other railways.**—Under the general law all railways have the power to construct their roads so as to unite with each other as with branches. Acts Tenn., 1851-2, § 16, ch. 151; Code Tenn. (S.) 1504.

Under this a railway may condemn land to build a track connecting or uniting it with another railroad. 14 Lea, 65; 9 Bax., 522.

[In Alabama.] **Branch roads may be constructed or lines extended.**—In Alabama it is provided that "a corporation, now existing or which may hereafter be organized for the building, constructing, and operating a railroad has authority, for the purpose of extending its line or forming a connection, to acquire, hold, and operate a railroad without the state; or within the state may extend its road, or may build, construct, and operate branch roads from any point or points on its line." Code Ala., 1896, § 1172.

**Same. Mode of making, purchasing, or extending branch roads.**—Such purchase must be made by resolution of the board of directors, which must be submitted to a meeting of the stockholders, called for the purpose of its consideration; of the time and place of which meeting, and of the purpose for which it is called, thirty days' notice must be given to each stockholder whose residence is known and by publication for four consecutive weeks in a newspaper published at the principal place of business of the corporation, and at such meeting

must be approved by the vote of a majority in value of the stockholders; and if such resolution is so approved, a copy thereof, and of the proceedings of the meeting of the stockholders, certified by the president and secretary, under the corporate seal, must be filed and recorded in the office of the secretary of state. Such extension or construction of such branch road must be made by resolution of the board of directors, to be entered in the record of the proceedings of the corporation, and designating the point from which and the point to which such extension, or such branch road, is to be constructed. A copy of such resolution, certified by the president and secretary, under the corporate seal, must be filed and recorded in the office of the secretary of state, and thereafter, for the purpose of making such extension or building such branch road, such corporation shall have all the rights, powers, and immunities which are now or may hereafter, by the laws of this state, be granted to and vested in railroad corporations under and by virtue of the general incorporation laws of the state. Code Ala., 1896, § 1173.

For method of condemnation, see "Eminent Domain," herein.

[In Georgia.] **Branch roads and extensions may be built, how.**—"Every railroad company may extend its railroad from any point named in the petition for charter, or may build branch roads from any point or points on its line of roads. Before making any such extensions or building any such branch roads, said company shall, by resolution of its board of directors, to be entered in the records of its proceedings, designate the route of such proposed extension or branch, and advertise same in all of the counties through which said extension or branch road will run, for the time and in the manner provided by section \*2160, and file a certified copy of such resolution and advertisements in the office of the secretary of state, which shall be by him recorded as original petitions for charters are filed, and said company shall pay to the treasurer of the state for the same a fee of twenty-five dollars for each extension or branch road. Thereafter said railroad shall have the right, within one year from the filing of said resolution with said secretary, to



begin the construction and equipment of said branch or extension, and if they fail to construct as much as twenty miles within two years, or complete the same if it be less in length than twenty miles, the powers and privileges to do so shall cease and determine. For the purpose of such extension or branch road said company shall have all the rights and privileges of condemning rights of way, or acquiring the same, provided for constructing and building the main line. All the provisions of this article relative to the issuance of stocks and bonds on the road, authorized under the original petition for incorporation, shall be applicable to, and control the issuance of, stocks and bonds on said proposed extensions." Code Ga., 1895, § 2169; Acts Ga., 1892, p. 45.

\*1. Section 2160, above referred to, provides, among other things, that "they have four weeks' notice of their intention to apply for said charter, by the publication of said petition in one of the newspapers in which the sheriff's advertisements are published, in case there is a newspaper published in said county, in each of the counties through which said proposed road will probably run, once a week for four weeks before the filing of said petition."

2. By § 5799 of the code of Georgia, 1895, it is also provided that railroads may take advantage of amendments for the purpose of allowing any existing road to take stock in or aid in the building of any branch road, without bringing the charter of said company under the provisions of the constitution of Georgia.

3. For method of condemning land for, see "Eminent Domain," herein. Refer to index.

[In Kentucky.] **Branch roads, switches, spurs, etc.**—"Any company may build such spurs, switches, tracks or branches as may be necessary to conduct its business or develop business along its line of road, and for that purpose shall have all the powers, and be subject to the same restrictions and liabilities, as are conferred upon it for the construction of its main line," etc. Code Ky. 1894, § 769.

For method of condemning land for, see "Eminent Domain" herein. Refer to index.

[Generally.] **May build side tracks and spur tracks.**—It is well recognized that a railway company may build side tracks and spur tracks on its right of way to establishments of shippers, as a power incidental to expressly granted powers. Elliott

on Railroads, vol. 1, § 42; 43 Minn., 527; 43 Am. & Eng. R. R. Cas., 170; 65 Pa. St., 1; 3 Am. & Eng. R. R. Cas., 186. But see 31 W. Va., 710; 36 Am. & Eng. R. R. Cas., 531, 553; 72 Mich., 206.

[In Alabama.] Though a railroad may have implied power to construct necessary turnouts and switches, yet the power to construct a branch is only given by statute. 95 Ala., 434.

For method of condemning, see "Eminent Domain" herein, sub-head successive appropriation.

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## CHAPTER LIII.

### BRIDGES—POWER TO BUILD, REPAIR, ETC.

**Charter provisions.**—The charters of nearly every one of the roads now owned and controlled by the Nashville, Chattanooga & St. Louis Railway have clauses, or some special act, permitting and regulating the erection of bridges over water courses. As only the main branch and northwestern division cross navigable streams, the charter provisions of those roads alone will be here set out. For information as to the other branches, see notes to their respective charters.

**Same. Main branch authorized to build.**—By section 22 of its charter the Nashville, Chattanooga & St. Louis Railway was given the right when necessary to construct the road, or any branch thereof, across or along any public road or water course; *Provided*, That the said road and the navigation of such water course shall not be thereby obstructed. See p. 13 herein.

The above section does not prevent temporary obstructions when necessary in building and repairing. 6 Pick. (Tenn.); 638; 88 Tenn., 331; 119 U. S., 280, 543.

**Same. Main branch authorized to purchase.**—By section 23 of the charter the Nashville, Chattanooga & St. Louis Railway was given power to purchase, have, and hold any bridge

or turnpike road over which it may be necessary to carry the said railroad. See p. 14 herein.

**Same. Northwestern branch authorized to build or purchase bridges, how.**—For full discussion of this, see pp. 91, 99, herein.

**Bridge at Bridgeport, on main line over Tennessee river, how authorized.**—For full discussion of this, see notes on p. 14 herein.

**Lights must be erected, draws opened, etc.; how.**—[Tenn. Acts.] All railroads crossing navigable streams shall, upon signal given by any steamboat, open its draw immediately and hoist large red light, if at night, at least ten feet above top of galleys frame, and put white light on each end of draw as a signal that all is ready. Code Tenn. (M. & V.), § 1533. [Alabama Acts.] By § 3445 of the code of Alabama, 1896, all steamboats are required to whistle three miles, two miles, one mile, and one-half a mile from bridge on approaching. Section 3446, of same code, provides that the railroad company shall thereupon open said draw. Section 3447, of same code, also provides for a method of signal lights to be used by railroad to let boats know all is ready.

**Bridge at Johnsonville, on Northwestern Division, over Tennessee river; how authorized.**—For full discussion of this, see sec. 43 of charter, and notes thereunder, of Nashville & Northwestern Railroad Company, pp. 43, 44 herein.

See notes to preceding section.

**Right to temporarily obstruct water courses in erecting and repairing.**—The obstruction of a water course, whether navigable or nonnavigable, by the placing in the stream of such temporary structures as are absolutely essential, and without which the work of erecting or repairing could not be accomplished, is legal, provided the company take care that such obstruction shall extend no further and be maintained no longer than is absolutely necessary for the completion of the work by the exercise of due diligence and the employment of an adequate force of men and machinery. Moreover, such necessary obstruction is not within the prohibition of the statute which provides: "No mill dam, fish trap, bridge, or other improvement shall be allowed so as to interrupt or in any way impair the navigation of any water course of the state." 6 Pick., 638; 88 Tenn., 331; 119 U. S., 280-285, 543-550.



If the stream, however, is one of the navigable waters of the United States, then, before such bridge is built or obstructions erected, a plan of the same must be submitted to and approved by the secretary of war. See acts of Congress 1888, ch. 860, as amended by acts of 1890, ch. 907, sec. 7.

What is meant by "one of the navigable waters of the United States" is a stream that is navigable in fact, and which, by itself or its connections with other waters, forms a continuous channel for commerce with foreign countries or states. 109 U. S., 385-395; 20 Wall., 430; (22:391).

If the stream is navigable only between different places within the state, then congress has no jurisdiction over it, but only the state legislature, and it is not one of the "navigable waters of the United States." 11 Wall., 411; 109 U. S., 385. In such cases the permission of the secretary of war need not be requested.

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## CHAPTER LIV.

*BY-LAWS—HOW AND BY WHOM TO BE ENACTED AND AMENDED  
—WHAT ARE LEGAL—PRESENT BY-LAWS OF NASH-  
VILLE, CHATTANOOGA & ST. LOUIS RAILWAY.*

[See also Meetings.]

**By whom to be enacted.**—Under sections 1 and 9 of the charter of the Nashville, Chattanooga & St. Louis Railway the stockholders were originally given the power to pass all such regulations, rules, and by-laws as might be necessary for the government of the corporation and the transaction of its business, but this was amended by the acts of 1847-8 ch. 70, and accepted by the company, so as to confer upon the directors, instead of upon the stockholders, all such power. Ordinarily the directors have no power to make by-laws, but in this instance the power has been conferred upon them by an amendment to the charter.

This was legal. See 8 Bax. (Tenn.), 108.

**What by-laws are legal.**—Generally speaking a corporation has the implied right and power to enact any by-laws not inconsistent with the charter, constitution, and laws of the land, for its government and the government of its officers and agents. Rorer on Railroads, 226; 18 Gratt., 819; 91 Tenn., 64. A by-law imposing restraints upon the alienation of stock, however, is void. 3 Lea, 6.

By-laws proper are not of a public nature and are obligatory only upon the corporate body, its corporators and agents. They do not affect the public in general, and hence large latitude is allowed in their enactments and they are considered reasonable if they are not in violation of the charter, the constitution, and the general laws of the land.

By-laws, however, are not what are usually meant by the terms "rules and regulations." The latter are for the direction and government of the employes and servants practically conducting the business of or engaged in operating the road and for passengers and others of the public transacting business with the company. Rorer on Railroads, 226; 4 Zab., 435.

The law governing the enactment of rules and regulations, as they affect the public, is different from that relating to the passage of by-laws. See subhead, "Rules and Regulations."

By-laws of a corporation are not evidence for it against strangers who deal with it, unless such by-laws are brought home to their knowledge and are assented to by them. Rorer on Railroads, p. 227; 68 N. C., 107.

**How enacted or amended.**—All by-laws, orders, and resolutions adopted by a railway company are always under the control of a majority of the stockholders [or directors where they are given the authority to pass them, as in this instance], unless expressly provided otherwise by the charter, and may be repealed, altered, or modified from time to time by the majority. 5 Sneed (Tenn.), 566-68. The present by-laws of the company provide that "no alteration or amendment shall be made in these by-laws except with the consent and approval of a majority of the whole board, and shall first have been brought up at one meeting of the board, and laid over until the following one." See by-laws in question, set out below.

## PRESENT BY-LAWS OF THE N., C. &amp; ST. L. RY.

The following are the by-laws of the N., C. & St. L. Ry. as adopted by the board, Dec. 14, 1898:

## BY-LAWS.

## STOCKHOLDERS' MEETINGS.

**SECTION 1.** A general meeting of the stockholders shall take place annually, on the first Wednesday after the second Tuesday of September, in the city of Nashville, at which an election for fifteen directors of the company shall be held. Notice shall be given by publication in one or more of the newspapers of the state, as may be ordered by the board of directors.

**SEC. 2.** Should the time fixed for the annual election of directors pass without an election being effected, the same may be held on such subsequent day as may be designated by the board of directors or by the stockholders at a general meeting, notice of which election shall be given in the manner aforesaid.

**SEC. 3.** In all cases, the directors for the time being, and the officers elected by them, shall continue in office until their successors shall be elected.

**SEC. 4.** The presence, in person or by proxy, of those who are the owners of a majority of the stock of the company shall be necessary to constitute a legal meeting of the stockholders, authorized to transact business.

## DIRECTORS.

**SEC. 5.** The officers of the company to be elected by the directors shall be a president, who shall be a member of the board, a secretary, treasurer, and comptroller.

In addition to the officers designated, there shall be appointed by the president, subject to confirmation by the directors, a general manager, traffic manager, general counsel, real estate agent, and such other officers as he shall from time to time deem necessary.

**SEC. 6.** The principal office of the company shall be in Nashville, Tenn., and shall be kept open every day except Sundays and legal holidays, unless otherwise ordered by the board of directors or president. Regular meetings of the board shall be held



at the office of the company in the city of Nashville, Tenn., on the second Tuesday of January, April, July, and October, at eleven o'clock A.M. Other meetings of the board shall be held on the call of the president, as the business of the company may demand. Special meetings may also be held at the request, in writing, of any three members of the board. Eight members shall constitute a quorum for the transaction of business.

Board meetings.

Special board meetings.

Quorum of the board.

SEC. 7. The president shall preside at meetings of the board, preserve order, and regulate debate according to the usual parliamentary rules. In the absence of the president, a chairman *pro tempore* shall be appointed by the board.

Presiding officer.

SEC. 8. There shall be appointed annually, as soon as may be after the organization of the board, the following standing committees, viz.: An executive committee, consisting of three members of the board, whose duty it shall be to aid and direct and advise in the management of the affairs of the company as might be done by the board of directors if in session. Said committee shall meet at the call of its chairman, or at the request of the president.

Standing committees.

Executive committee.

A finance committee, consisting of three members of the board, which shall have general supervision of the funds and securities of the company. It shall also be its duty to examine and count the securities and cash in the custody of the treasurer at least once every three months, and report to the board of directors as soon as possible after the first days of January, April, July, and October in each year.

Finance committee.

The president shall be *ex officio* a member of all committees, and shall be notified of all meetings of committees.

President ex-officio member all committees.

All committees shall be appointed by the president, unless otherwise ordered by the board.

SEC. 9. All elections for officers shall be by ballot, unless by unanimous consent, when the vote may be taken *viva voce*.

Officers, mode of electing.

Any vacancies that may occur in the board, from any cause whatever, shall be filled by the board by the election of a person to fill such vacancy, as provided for in the tenth section of the charter.

Vacancies board.

SEC. 10. No member of the board shall, on behalf of this company, negotiate any contract or arrangement for work or materials for the use and benefit of this company, to be done or furnished by any company or partnership in which he may have an interest, nor shall he be entitled to vote on the acceptance or approval of any purchase or contract in which he is interested.

Directors shall not be interested in contracts with company.

No officer, agent, or employe of the company shall be concerned, directly or indirectly, in any contract, arrangement, or engagement for doing work or furnishing materials to the company, or be connected with any other company, person, or firm engaged in the transportation of persons or property over its lines, or be interested in any manner whatsoever in

Officers, agents, or employes shall not be interested in contracts with company.

any business done with the company when transacted by others over its lines.

No money shall be advanced, nor shall any financial obligation or contract for advancing money to any individual or company, or for leasing, operating, constructing, or otherwise controlling any road of any other company, be entered into, unless the matter shall have been first brought to the special attention of the board, when it shall be discussed and laid over until the next meeting (unless by unanimous consent of the members present), and become valid only by receiving the approval of a majority of the whole board.

Order of  
business.

SEC. 11. The order of business shall be as follows:

1. Reading of minutes, which shall stand approved if there be no motion to amend them.

2. Report of committees.

3. Report of the president, or other officers of the company.

4. Miscellaneous communications.

5. Unfinished business.

6. New business.

Certificates of  
stock.

SEC. 12. Certificates of stock shall be issued to the stockholders, and transfers of them made when required.

Any person or persons claiming a certificate or evidence of stock to be issued in lieu of one lost or destroyed, shall advertise the same in one or more newspapers in Nashville, Tenn., twice a week for four weeks, giving the number and date of certificate lost, and the number of shares it represented. The party shall then make application to the board of directors, describing the certificate by its number, date, and amount, and give full details as to the manner of loss, verified by oath or affirmation, and accompanied by a copy of the advertisement, and also a bond of indemnity, with satisfactory security, in at least double the amount of the par value of the shares represented by the certificate, against any loss or damage that may arise from the issuing of a new certificate, whereupon the board may direct the issue of a new certificate of the same tenor with the one alleged to have been lost or destroyed, specifying upon the face of the certificate that it is in lieu thereof and a duplicate.

Duplicate certi-  
ficate of stock.

SEC. 13. All notes issued by the company shall be signed by the president, countersigned by the treasurer, or the assistant treasurer, and have the seal of the company affixed by the secretary, or persons specially authorized in case of his absence or disability.

Issue of notes  
by the company.

SEC. 14. The official seal now in use by the company shall continue to be its official seal until otherwise ordered.

Official seal.

SEC. 15. No alteration or amendment shall be made in these by-laws except with the consent and approval of a majority of the whole board, and shall first have been brought up at one meeting of the board, and laid over until the following one.

Alteration or  
amendment  
of by-laws.

SEC. 16. All by-laws and regulations in conflict herewith are hereby repealed and abrogated, and these by-laws shall take effect and be in force from and after January 1, 1899.

Former by-laws  
repealed.

## ORGANIZATION FOR CONDUCTING THE BUSINESS OF THE COMPANY.

That the duties, powers, and responsibilities of the officers and employes of the Nashville, Chattanooga and St. Louis Railway may be defined and fully understood, and its accounts systematically and correctly kept, the board of directors has adopted the following organization for conducting the business of the company:

The administrative duties upon the line of the road, its branches, and the connecting roads over which the company's cars now or may hereafter pass, shall be distributed as follows, viz.: To the general office, the operating department, traffic department, supply department, accounting department, law department, and real estate department, with such other agencies for special objects as the board may from time to time deem necessary.

Distribution of  
administrative  
duties.

### GENERAL OFFICE.

#### PRESIDENT.

The president shall preside at the meetings of the board of directors and be *ex officio* member of all committees. He shall call meetings of the board and of the committees when he deems necessary. He shall be the medium of communication to the board and to the committees of all matters presented for their consideration, and shall have general supervision and direction of all departments of the company's service.

Duties of  
president.

#### TREASURER.

The treasurer shall give bond in the sum of not less than \$25,000, or deposit with a safe depository agreed on by the parties, securities of that value (in neither of which shall a member of the board or officer of the company be a party or interested) for the faithful performance of all his duties. He shall be the custodian of the company's funds and securities. The securities shall be deposited in the company's box in a safe deposit company's vault, and shall be deposited or withdrawn only in the presence of the president or a member of the finance committee, and shall be withdrawn for sale or otherwise only on the written order of the president, which order shall specify the disposition of such securities to be withdrawn. He may retain in his safe notes received by the company. He shall keep a set of books showing the receipts and disposition of all the company's funds and securities that may pass through his hands, and keep the accounts with such banks or places of deposit as the board, or finance committee with the approval of the board, may from time to time designate.

Duties of treasurer: bond for \$25,000; custodian of company's funds and securities; withdrawal of securities.

May retain in his safe sundry notes; treasurer's accounts.



The treasurer shall report daily to the comptroller the receipts and disbursements of his office, in order that they may be entered on the general books of the company. He shall also make a daily statement of such receipts and disbursements to the president, showing the daily cash balance and the banks in which it is deposited. His books shall, at all times, be open for inspection by the president, finance committee, or any member of the board.

Daily reports to accounting department, and reports to president; books open for inspection of president, etc.

All checks shall be signed by the treasurer, or by the assistant treasurer when authorized by the treasurer. The treasurer shall not pay any voucher that is not properly approved for payment. He shall attend to such other duties connected with the finances of the company as may be required of him by the president.

Signing and countersigning of checks; approval of vouchers; other duties.

#### ASSISTANT TREASURER.

The assistant treasurer shall give bond in the sum of not less than \$25,000, or deposit with a safe depository, agreed on by the parties, securities of that value (in neither of which shall a member of the board or officer of the company be a party or interested), for the faithful performance of such duties as may from time to time be assigned to him.

Duties of assistant treasurer.

#### SECRETARY.

The secretary shall keep a correct record of the proceedings of the board, give the required notice to the members of all stated and special meetings, attend the meetings of all standing or special committees, when required, and keep a record of all their proceedings.

Duties of secretary.

He shall have the custody of originals of all contracts, deeds and agreements, and of other valuable papers.

Contracts, agreements, and valuable papers.

He shall keep the stock and transfer books of the company, cancel old certificates at the time of transfer, and register all certificates of stock, and sign and affix the seal of the company to the new certificates.

Stock transfer books.

He shall see that all certificates of stock are countersigned by the transfer agent and the register, and that no transfers are made except on the stockholder's signing in person or by attorney.

Certificates of stock.

No transfer shall be allowed without the surrender of the certificate transferred, and such certificate shall be cancelled and filed.

Transfer of stock.

No transfer of stock shall be made for ten days next preceding any meeting of the stockholders, nor for ten days prior to the payment of a dividend.

He shall examine all New York cancelled certificates surrendered by the register, and file the same. He shall certify all vouchers of the general expense account that may from time to time be fully approved, and also the general expense pay rolls. He shall give notice of annual or other general or

Cancelled certificates.

General expense account.

special meetings of the stockholders, as required by the charter and by-laws, and shall perform such other duties as the president or board may from time to time assign to him.

The president may, at his discretion, require the duties of the secretary, as herein defined, to be performed by the treasurer.

Duties of secretary may be performed by treasurer.

#### TRANSFER AGENT, NEW YORK.

The transfer agent in New York shall give bond in the sum of not less than \$10,000, or deposit with a depository agreed upon by the parties securities of that value (in neither of which shall a member of the board or officer of the company be a party or interested), or any amount that may be approved by the board, for the faithful performance and discharge of his duties. He shall cancel all the New York certificates presented for transfer, issue new certificates therefor, and counter-sign and present the same to the registrar for countersignature and certificate of cancellation of prior certificate. He shall keep the necessary transfer books, which shall show every transfer, and also a ledger giving the name of each stockholder. He shall make daily reports to the secretary at Nashville of all transfers of stock, and at the end of the month report the total number of shares transferred during the month, which must agree with the certificates returned by the registrar. He shall also perform such other duties as the president or board may from time to time assign to him.

Duties of transfer agent, New York.

Bond of transfer agent, \$10,000.

Transfer of stock.

Report of transfers of stock to secretary.

#### REGISTRAR OF TRANSFERS.

There shall be appointed by the president, subject to confirmation by the board of directors, an incorporated bank or trust company in the city of Nashville, and one in the city of New York, to act as registrar of transfers, and no certificate of stock hereafter issued in Nashville shall be valid or binding on this company unless registered and countersigned before issue by the said registrar of transfers in Nashville; and no certificate of stock issued in New York shall be valid or binding on this company unless registered and countersigned before issue by the said registrar of transfers in New York, and no certificate of stock shall be accepted for transfer and cancellation unless so registered.

Duties of registrar of transfers.

Certificates to be countersigned before issue.

The registrar of transfers shall register and countersign no certificate of stock, except such as shall be presented for registry by the transfer agent of the company, duly countersigned by the latter, and unless accompanied by a certificate or certificates for an equal number of shares duly canceled.

The registrar of transfers in New York shall also keep the necessary registry books for the registration of any bonds which may be presented for that purpose.

Registration of bonds.

## OPERATING DEPARTMENT.

## GENERAL MANAGER.

The general manager shall, under the supervision of the president, have charge of the operating department. He shall be responsible for the safe and economical working of the roads committed to his charge, and shall report, as may be required by the president or board, upon their condition, and make, from time to time, such suggestions in relation to the operations of his department as may seem to be necessary to promote the interests of the company.

**Duties of  
general  
manager.**

He shall have authority, with the approval of the president, to order, through the supply department, machinery and tools for the shops; materials for repairs of rolling stock, machinery and roadway, and for all other purposes connected with his department.

**Machinery,  
tools, and  
materials.**

All special contracts for equipment, machinery, tools and materials must be sanctioned by the president or board, and copies thereof be furnished to the supply department and to the comptroller.

**Special  
contracts.**

Current supplies shall be furnished by the supply department on the written requisition of the general manager, or of such other officer as may be specially designated in writing by him.

**Current  
supplies.**

All accounts contracted prior to the first day of each month shall be prepared for payment on proper vouchers and sent to the auditor of disbursements, who shall examine the correctness of the same, see that the account charged is the proper one, audit and affix his signature thereto and submit them to the president for approval, and have them ready for payment on the 15th of the succeeding month.

**Payment  
of bills and  
vouchers.**

The general manager shall, with the approval of the president, appoint a chief engineer, a superintendent of machinery, and a superintendent of transportation, to assist him; he shall also appoint, with the approval of the president, superintendents of the various divisions of the system.

**Staff officers  
of the general  
manager.**

He shall also prepare rules defining the duties, in detail, of all subordinate officers and agents in his department, which, when approved by the president, shall be strictly enforced; and shall perform such other duties as the president may from time to time assign to him.

**Rules of his  
department.**

All books or papers in the possession of the general manager, or of any officer or agent in his department, shall be open to the inspection of the president or any member of the board, or such expert as they may authorize and appoint.

**Books and  
papers open  
to officers,  
inspectors, etc.**

In case of accident upon any of the roads under his charge, the general manager shall immediately report the facts to the president, and, as soon as possible, institute a thorough investigation into the causes which led to it, and communicate in writing the

**Accidents.**



result, together with his views and action upon the case, to the president for the information of the board. The general manager shall keep the president fully advised of all occurrences and transactions of importance connected with his department.

#### CHIEF ENGINEER.

The chief engineer shall act as assistant to the general manager in all matters connected with maintenance of way, bridges, and buildings, and shall have the direction of any construction work that may be placed in his charge. He shall prepare plans and estimates for the construction or repair of all bridges necessary to be constructed or repaired, and shall prepare plans and specifications and estimates for other structures that may be required; and it shall be his duty to make periodical examination of all of the bridges and of the track, on the several roads, and report upon their condition to the general manager.

**Duties of chief engineer.**  
**Engineer of bridges and other structures.**  
**Reports to general manager.**

#### SUPERINTENDENT OF MACHINERY.

The superintendent of machinery shall act as assistant to the general manager in matters pertaining to the mechanical department. He shall have general supervision and control over all the rolling stock, shops, tools, etc., and shall furnish copies of all standard drawings that may be required for work in the mechanical department, and give such instructions as will insure uniformity in the construction and repair of all the company's rolling stock and machinery.

**Duties of superintendent of machinery.**

He shall keep a complete record of the numbers and condition of all the locomotives, cars, and machinery owned by the company, whether upon its own road or upon lines leased or otherwise controlled.

**Record of rolling stock and equipment.**

He shall keep in his office a record of all patents owned or purchased, and shall see that all officers are properly informed concerning the rights of the company therein, and perform such other duties as may be assigned to him by the general manager.

**Record of patents.**

In the performance of these general duties, he shall visit the shops of the company from time to time, and issue such instructions as he may deem necessary for the efficiency and economy of the service.

#### SUPERINTENDENT OF TRANSPORTATION.

The superintendent of transportation shall represent the general manager in the transportation department. He shall have charge of the distribution of the car equipment. It shall be his duty to see that the cars are moved promptly, so that they may be made to perform the fullest service possible.

**Duties of superintendent of transportation.**

He shall consult freely with the traffic officers, so that they shall be, as far as possible, advised as to the supply of and demand for transportation to move the company's traffic, governed by its apparent necessity, in order to properly protect and promote the company's interest.

He shall keep a record of all of the cars belonging to this company, and a record of the movements of all cars on the company's lines, and an account of the amounts that may become due to it for the use of its cars on foreign roads, and of the amount due to foreign roads for use of their cars on the roads of this company, and he shall make a monthly report of the same to the auditor of receipts, who will make settlement of such accounts.

He shall also have charge of the telegraphic service of the company, under such rules and regulations as may be adopted for his guidance, and perform such other duties as may be assigned to him by the general manager.

#### DIVISIONS.

The roads owned, leased, operated, and controlled by the company shall be in five divisions, each of which shall be in charge of a division superintendent, as follows:

**Nashville Division.** 1. The Nashville Division, including the lines from Hickman to Nashville, Dickson to Mannie, and West Nashville Branch.

**Chattanooga Division.** 2. The Chattanooga Division including the lines, Nashville to Chattanooga, Nashville to Lebanon, Wartrace to Shelbyville, Cowan to Tracy City, and Bridgeport to Pikeville.

**Atlanta Division.** 3. The Western & Atlantic Railroad and the Rome Railroad, extending from Chattanooga to Atlanta and Kingston to Rome.

**Paducah and Memphis Div.** 4. The Paducah and Memphis Division, including the lines from Paducah to Memphis and Lexington to Perryville.

**Huntsville Division.** 5. The Huntsville Division, including the lines from Decherd to Gadsden, Elora to Columbia, Fayetteville to Jeff, and Tullahoma to Bon Air.

#### DIVISION SUPERINTENDENTS.

**Duties of division superintendents.** Superintendents shall, on their respective divisions, exercise all the powers of the general manager which may be necessary for the proper management of their divisions.

They shall be responsible to the general manager for the maintenance of the roadway and buildings, and for the proper movement of cars and trains, and the economical administration of the business of their divisions. They shall, with the approval of the general manager, appoint suitable persons for the various subordinate offices in the operating department, including station agents.

#### TRAFFIC DEPARTMENT.

##### TRAFFIC MANAGER.

The traffic manager, under the supervision of the president, shall have direct charge of all the traffic of the company, freight, passenger mail, and express. He shall, subject to the approval of the president,

make all rates, arrangements, and contracts for such traffic over the lines operated by the company, and shall conduct the necessary negotiations with individuals, corporations, and connecting or competing companies, in relation thereto. He shall, subject to the approval of the president, appoint a general freight agent and a general passenger agent to assist him.

Duties of  
traffic  
manager.

#### GENERAL FREIGHT AGENT.

The general freight agent shall act under the direction of the traffic manager. He shall be charged with the duty of procuring freight traffic, and of properly assessing the rates fixed for the transportation thereof, and shall instruct the freight agents, soliciting agents, and station agents in all matters pertaining to the soliciting, receiving, forwarding, and delivery of freight.

Duties of  
general  
freight agent.

He shall also examine all claims pertaining to the freight service, and make vouchers certifying thereto, for such as are found valid, and transmit them to the traffic manager, who, if approving, shall indorse such approval thereon, and transmit them to the auditor of disbursements.

Claims for loss  
and damage.

#### ASSISTANT GENERAL FREIGHT AGENT.

The general freight agent may be aided by an assistant general freight agent, who shall act for the general freight agent in his absence, and perform such duties as may be assigned to him by the general freight agent.

Duties of  
assistant  
general freight  
agent.

#### DIVISION FREIGHT AGENT.

The general freight agent may be assisted also by a division freight agent of the Western & Atlantic Railroad, whose office shall be at Atlanta, Ga., and who shall, under the direction of the general freight agent, be specially charged with the duty of procuring freights for, and making local rates on, his division. With this object in view, he shall spend as much time as practicable on the division under his charge for the purpose of familiarizing himself with the requirements of the agricultural, manufacturing, and commercial industries along such division, and adjacent thereto, and shall consult with the division superintendent and other local officers in regard to all matters connected with the development of the local freight traffic of the road.

Duties of  
division  
freight agent.

#### GENERAL PASSENGER AGENT.

The general passenger agent shall act under the direction of the traffic manager. He shall be charged with making arrangements and rates for the passenger traffic over the lines owned and operated by the company, and shall also, with the approval of the traffic manager, make all necessary negotiations and arrangements with other railroad companies in relation thereto. The printing and distribution of all tickets and passenger advertising matter shall be entrusted to his charge. He shall be aided by an assistant general passenger agent, who shall perform such duties as may be assigned to him by the general passenger agent, and who shall act for him in his absence.

Duties of general  
passenger  
agent; passen-  
ger traffic.

Assistant  
general pas-  
senger agent.



He shall, subject to the approval of the traffic manager, employ or authorize the employment of all the necessary agents for the soliciting and procuring of passenger traffic, and all necessary clerical force to properly transact the business of his department.

All rates for the transportation of passengers shall, under the authority of the president, be made by the traffic manager or general passenger agent, and notice of the same shall be furnished to the auditor of receipts as soon as fixed.

#### GENERAL PASSENGER AGENT, WESTERN & ATLANTIC RAILROAD.

The general passenger agent shall also be aided by a general passenger agent of the Western & Atlantic Railroad, with office at Atlanta, Ga., who shall perform such duties in connection with the passenger business of the company as may from time to time be assigned to him.

#### GENERAL BAGGAGE AGENT.

The general baggage agent shall be under the supervision of the general passenger agent, and shall be charged with making arrangements and rates for receiving, checking, and billing baggage, and shall examine all claims for loss of or damage to baggage.

#### SUPPLY DEPARTMENT.

##### PURCHASING AGENT.

The purchasing agent shall purchase all articles for use in every department of the company, under such general directions as the president may from time to time give, but only on the written requisition of an officer duly authorized to make the same.

All purchases for use in the operating department shall be made on the written requisition of the general manager, or such other officer in said department as he may authorize, in writing; all purchases for use in other departments shall be made on the written requisition of such officer as the president may, in writing, designate.

The purchasing agent shall negotiate the sale of old property and material belonging to the company. In order that he may be fully advised as to the material it is deemed advisable to dispose of, the general manager shall cause to be made to him each month a complete report of same. He shall report all sales of such property and material to the comptroller for proper entry in the company's books.

Accounts shall be opened by the accounting department for each division under the following heads:

*Store Stock*—Stores and supplies carried in stock.

*Stationery Stock*—Stationery carried in stock.

*Shop Stock*—All stores, supplies, and material for shops.

*Road Stock*—Rails, fastenings, ties, ballast, and lumber.

*Fuel Stock*—Coal and wood.

To which shall be charged all purchases made on account thereof, from vouchers properly approved by the purchasing agent and countersigned by the auditor of disbursements, and, when approved by the president, shall be returned for payment at the time specified for other disbursements.

The details of accounts between the purchasing agent and the operating and other departments of the company for supplies furnished them, shall be kept and returns made thereof at such times and in such manner as the comptroller shall direct.

Accounts between purchasing agent and different departments.

The purchasing agent shall have authority to employ, subject to the approval of the president, such clerks to aid him in the duties of the office as a proper economy may require, for the faithful performance of whose duties he shall be responsible to the company.

Nomination of clerks.

He shall be aided by a general storekeeper, who shall perform such duties as may be assigned to him by the purchasing agent, and who shall act for him in his absence. He shall act under the supervision of the president.

Duties of general storekeeper.

## ACCOUNTING DEPARTMENT.

### COMPTROLLER.

The comptroller shall have the direct charge of all the books and accounts of the company, and shall see and know that the system for keeping the same is fully enforced and maintained.

Duties of comptroller.

No change shall be made in the forms and blanks relating to receipts and disbursements now in use on the several divisions of the company's lines, without the written consent of the comptroller.

Forms and blanks to be used.

He shall appoint, with the approval of the president, all the officers and their assistants in his department, and it shall be his duty to know that all bonds required by the regulations of the company are given. All bonds for the faithful performance of the duties of officers, agents, and employes shall, upon approval of the general counsel, be transmitted to the custody of the comptroller.

Bonds of officers and employes.

He shall be aided by an assistant comptroller, who shall perform such duties as may be assigned to him by the comptroller, and shall act for him in his absence.

Duties of assistant comptroller.

The comptroller shall also be aided by an auditor of receipts and an auditor of disbursements.

### AUDITOR OF RECEIPTS.

The auditor of receipts shall have immediate charge of all accounts relating to earnings of the company. He shall report to the comptroller all deviations from the system of accounts prescribed for the agents in the employ of the company.

Duties of auditor of receipts.

**Examination of agents' accounts.**

He shall, under the supervision of the comptroller, cause an examination of the accounts of agents to be made as often as may be necessary. He shall be aided by an assistant auditor of receipts, who shall act for him in his absence, and perform such duties as may be assigned him.

**Assistant auditor of receipts.**

#### AUDITOR OF DISBURSEMENTS.

**Duties of auditor of disbursements.** The auditor of disbursements shall have immediate charge of all accounts relating to disbursements of the company. It shall be his duty to examine all pay rolls and vouchers before payment, and see that they are returned in due form, and that the same are distributed to their proper accounts. He shall not audit any bill or claim unless it be approved by the proper officer.

**Examination and approval of vouchers.**

**Auditing bills and claims.**

He shall not audit any bill or claim unless it be approved by the proper officer.

All vouchers of every nature shall be countersigned by him or by the assistant auditor of disbursements before being paid. He shall report to the comptroller all deviations from the system of accounts prescribed for the disbursements of the company. He shall be aided by an assistant auditor of disbursements, who shall act for him in his absence, and perform such duties as may be assigned him.

**Deviations in system of accounts.**

**Assistant auditor of disbursements.**

He shall be aided by an assistant auditor of disbursements, who shall act for him in his absence, and perform such duties as may be assigned him.

The expenses incident to conducting the business of the company shall be kept under the following general heads, and shall be subdivided respectively into accounts as required by the regulations prescribed by the comptroller, subject to the approval of the president or board of directors, viz.:

**Heads under which expenses shall be kept.**

- Maintenance of way.
- Maintenance of equipment.
- Conducting transportation.
- General expenses.
- Construction.

All cases of defalcation, or any want of promptness or obedience in carrying out instructions on the part of any officer or agent in making his returns to this department, or otherwise, shall be immediately reported by the proper auditor to the comptroller, and such steps shall be taken as he may order, or the necessity of the case may seem to require, and if the delinquent be under bond to the company, his sureties shall be informed through the comptroller of the known facts in the case so far as they are interested. All defalcations shall at the same time be reported by the comptroller to the president, and to the head of the department with which the defaulter is connected.

**Reports of defalcation, want of promptness, etc., to comptroller.**

**Reports of defalcations to president.**

and to the head of the department with which the defaulter is connected.

**Comptroller's book of record.**

**Treasurer's daily report to accounting department.**

The comptroller shall keep in his office a set of books containing a complete record of all the business transactions of the company. A daily report shall be made by the treasurer to this department of all receipts and disbursements, in order that proper entries may be made.



The treasurer and comptroller shall verify the cash balance, as per the general ledger, at least once in each month, by comparing the same with the cash balance on hand and in the different depositaries where the funds of the company are kept.

Verification of cash balance.

The comptroller shall furnish the president, for the information of the board, as early as possible, with a detailed statement of the receipts and disbursements of the company for the previous month.

Comptroller's monthly statement to president.

He shall also render statements of the cash securities on hand to the finance committee, which committee shall verify the correctness of the same.

He shall, as early as practicable after the expiration of the fiscal year, present to the president a complete statement of the accounts for the year, from which statement an annual report shall be made to the stockholders, to be signed by the president.

Annual report to president.

## LAW DEPARTMENT.

### GENERAL COUNSEL.

The general counsel shall have control of the legal business of the company, and shall keep himself advised of the character and progress of legal proceedings and claims by and against the company, or in which it is interested, and keep in his office books in which shall be entered all suits or actions of every nature in which the company may be a party or interested, with sufficient data to show the nature of the case and the proceedings therein. Such books shall be open at all times to the inspection of the directors and president. He shall prepare opinions on any subject that may be referred to him by the president or board, supervise the preparation of all contracts to be executed by the company when referred to him for that purpose, and perform such other duties as may be assigned to him. All bonds to be executed by the company shall be submitted to and approved by him before execution.

Duties of general counsel: legal proceedings and claims against company.

Books of record.

Preparation of contracts.

Bonds to be executed by company.

He shall represent the company, or see that it is represented by local attorneys, in all legal proceedings by or against it, or affecting its interest, and he shall, whenever advised of any accident, claim or liability, take, or cause to be taken, immediate measures to investigate the facts, and ascertain the legal position of the company, and shall in each case promptly do what may be required for the protection of the interests of the company.

Protection of company in case of accident claim, or liability.

He shall also examine and adjust all assessments and correct and adjust all bills for taxes.

Assessments, taxes, etc.

He shall also examine all bonds of agents and other officers and employes, and agreements for sidings, etc., that may be referred to him for that purpose by any officer of the company.

Bonds of agents.

He shall have charge of all conveyances, examination and perfection

of titles to the company's property and preparation of all other papers necessary in conducting the legal business of the company.

**Preparation and execution of titles, deeds, bonds, releases, briefs, mortgages, documents, bonds of all officers and employes, etc.**

All deeds, mortgages, leases, releases and documents relating to real estate, official bonds, and all bonds required by the regulations to be given by officers, employes, and others, shall be prepared and executed under the direction of the general counsel, and all such documents, certified proceedings of condemnation, contracts, and other documents,

relating to real estate, abstracts of title, and certificates of search, shall, when executed, and recorded, be forwarded to him for examination before being filed among the records of the company.

He shall have power to appoint local attorneys in the several counties through which the company's lines of road run, or in such groups of counties as he may deem best, with power to assign any local attorney to special duties in a county other than that in which he is regularly appointed; and he shall

**Appointment of local attorneys, clerks, etc., for law department.**

have power to employ a sufficient number of clerks for the execution of the clerical duties of the law department, and, with the approval of the president, such agents for special duties as he may deem necessary.

Upon the recommendation of the local attorney, acquainted with the facts, stating in writing his reasons for the recommendation, the general counsel shall have power to adjust and compromise all claims against the company for damages growing out of the operation of its road, either before or after litigation has commenced.

**Adjustment of claims by general counsel.**

#### ASSISTANT GENERAL COUNSEL.

The general counsel may, with the approval of the president, appoint an assistant general counsel, who shall act as aid to the general counsel, and such duties as are herein assigned, and powers given to, the general counsel may also be performed and exercised by the assistant general counsel.

**Assistant general counsel.**

#### DIVISION COUNSEL W. & A. R. R.

The general counsel shall, with the approval of the president, appoint division counsel for the Western & Atlantic Railroad, and such duties as are herein assigned, and powers given to, the general counsel, may be performed and exercised by the division counsel in the State of Georgia, under the direction of the general counsel.

**Division counsel W. & A. Railroad.**

#### LOCAL ATTORNEYS.

The local attorneys shall attend to all such legal business of the company as may be assigned them by the general counsel. They shall promptly report to him all legal proceedings in which the company is interested, stating the nature of the claim, and the defense thereto, and shall, from time to time, advise him of all proceedings connected therewith. They shall also report to him every transaction of importance connected with the legal business and affecting the interests of the company in their respective districts.

**Duties of local attorneys.**

## APPROVAL OF LAW DEPARTMENT VOUCHERS.

All vouchers for disbursements growing out of the law department shall be approved by the local attorney in whose district they may originate, and by the general counsel.

Approval of  
law department  
vouchers.

Bills for judgment, court costs, and attendance of witnesses shall be certified by the local attorney in charge of the cases in which they shall be incurred, and forwarded to the general counsel, who, or the assistant general counsel, will approve and forward them to the auditor of disbursements.

Vouchers for  
bills, court  
costs, judg-  
ments, etc.

## REAL ESTATE DEPARTMENT.

## REAL ESTATE AGENT.

The real estate agent shall, subject to the supervision of the president, have control of the real estate belonging to the company. He shall have custody of the original maps and profiles of the road, and plans of the real estate owned or held by this company and by the companies the roads of which are leased and controlled by this company. He shall prepare and keep in his office, for the inspection of the proper officers, or any member of the board, descriptive lists of all real estate owned by this company and by companies whose roads are leased and controlled by this company; and also statements of the revenues received therefrom.

Duties of real  
estate agent.

Maps, profiles,  
descriptive lists  
of property,  
and real estate  
records.

He shall examine, approve, and submit to the general counsel for approval, all conveyances and leases of real estate (to, from, or by this company) before the same are executed, and shall record them in his office before depositing them with the secretary. Under the advice of the general counsel, or assistant general counsel, he shall value and give lists of the company's property which may be subject to taxation, to the proper officers, assessors, or boards of assessors, by whatever name designated, of the several states in which the property may be situated.

Conveyances  
and leases of  
real estate.

Taxation lists.

He shall examine all assessments of real estate for taxation, and shall scrutinize and approve all tax bills before submitting them to the general counsel. He shall act in concert with the general counsel and local attorneys in securing proper valuations.

Assessments  
and tax bills.

He shall approve, before payment, all bills due for rent of property leased to the company, and notify the controller of all rents upon property owned by the company, and keep a record of the same.

Bills for rent  
of property  
leased.

He shall furnish to the other departments of the company's service such abstracts or copies of papers and plans, and such other information relating to real estate as may from time to time be required for the proper conduct of the business of the company; and report to the general manager all persons who are in arrears for rent of company's property; and perform such other duties as the president or board may from time to time assign to him.

Abstracts and  
copies of papers.

Bills for rent.



The president may, at his discretion, require the duties of the real estate agent, as herein defined, to be performed by the chief engineer.

Chief engineer  
may perform  
duties of real  
estate agent.

### GENERAL REGULATIONS.

1. All the officers named in this organization, except those otherwise provided for, shall be nominated to the president for his approval, by the heads of the departments in which they are to serve.

Mode of appoint-  
ing officers.

2. The station agents of the company shall be subject to the supervision and direction of the general manager, whose regulations shall be enforced through the respective superintendents. Those whose compensation consists of a fixed salary shall devote their whole time and attention to the interests of the company, unless expressly exempted therefrom by the president or general manager. They shall take charge of the property of the company at their stations, and perform such other duties connected with the business of the company as may be prescribed for them not inconsistent with a proper discharge of their duties as agents.

Regulations  
governing  
freight, ticket,  
and station  
agents.

3. All officers, agents, conductors, and other employees of the company who may, by virtue of their office, or in the performance of their duty, receive money on account of the company, shall, when required, give bond for the faithful discharge of their duties, in such sums as shall be designated by the president.

Accounts and  
reports of  
agents.

4. Any person making application for the issuance of duplicate checks, vouchers, or other obligations of the company, in lieu of the originals alleged to be lost, stolen, or destroyed, shall give bond, with security, in double the amount or value involved, to indemnify the company against the presentation or use of the originals, but no duplicate shall be issued unless authorized by the president; and all applications for such duplicates shall be made in writing, describing the document, and be signed and sworn to by the applicant.

Bonds for dupli-  
cated checks,  
vouchers, or  
obligations of  
the company.

5. All bonds to secure the company against loss by reason of the improper acts, frauds, or other violation of duty on the part of any officer or agent of the company, from whom it requires bond, shall be given by some guarantee or incorporated company, said company to be approved by the board, or personal bonds with good and sufficient sureties may be accepted at the option of the board. In case the guarantee or incorporated company does not issue bonds in the amount required, then, for the additional amount of the bond required, said officer or agent shall give his personal bond, with two or more sureties, who shall be owners of property aggregating in value, without encumbrance, the amount of the bond, or for such additional amount give security in the form of mortgage on real estate, or deposit of bonds or stocks, subject to the approval of the board.

Bonds to se-  
cure company  
against fraudu-  
lent acts of offi-  
cers or em-  
ployes.

Personal bonds,  
securities, etc.

6. It shall be the duty of the officer appointing officers, agents, con-

ductors, or other employes, who are required to give bond, to immediately notify the comptroller, through the proper channel, and give such information as will enable him to have the necessary bond prepared.

Duties of appointing officers and employes requiring to give bond.

7. All payments to the regular employes of the company shall be by pay roll, to which the signatures of the payees must be attached in all cases where they remain in service until the day of payment. The crosses or marks of those who are incapable of writing their names must be duly witnessed.

Payments to regular employes by pay roll; witness to signature.

8. For purchases made by the purchasing agent, and for all expenses other than those contracted for labor or services, vouchers shall be prepared and approved by the heads of the departments by whose direction such purchases or expenses shall have been made; and the vouchers, when so certified and approved, shall be forwarded to the auditor of disbursements, who shall examine the correctness of the same, see that the account charged therewith is the proper one, audit and affix his countersignature thereto, and submit them to the president for approval.

Preparation of vouchers for purchases, labor, etc.

All payments of employes on pay rolls shall in like manner be certified by the heads of departments, and shall be sent to the auditor of disbursements, who shall examine the correctness of the same and obtain the approval of the comptroller or assistant comptroller thereto, after which the auditor of disbursements shall audit and countersign the same.

Pay roll and method of payment.

9. All instructions emanating from the board or president in regard to the business of any of the departments shall be given through the head thereof.

Instructions given through heads of departments.

10. The president shall fix the compensation of all the officers and agents in the several departments, and the wages of other employes shall be fixed by the heads of the departments to which they respectively belong, subject to the approval of the president, and no new appointment or increase of salary shall be made unless authorized by the president or general manager, on form 983, which must accompany the roll on which such employe is returned. In case of a vacancy in any office, each head of a department may make acting or temporary appointments, which shall be communicated forthwith, in writing, to the president, which temporary appointment may be valid until permanent appointments are made.

the officers

Salaries of officers and agents fixed by president.

president or

Temporary appointments in case of vacancy.

11. The appointment of all other employes on the line of the road not herein provided for, and the defining of their powers and duties, is hereby vested in the general manager, or in the officers to whom he is authorized to delegate this power. The heads of the departments will be held responsible to the board for the good conduct of all the employes in their respective departments, and shall have the power of dismissal when they think it for the interest of the company, when so required.

Appointment of employes by general manager.

Heads of departments responsible for employes.

12. Each head of a department shall make to the president, for the information of the board, a complete annual report of the affairs under his charge during the year, and shall report also to the president all matters of importance or interest.

Annual report  
by heads of  
departments.

13. Each officer, agent, and employe of the company in each department will be required to give his whole time and attention to the duties assigned to him, and use every exertion to secure to the company the best results in its operations, by increasing the traffic of its railroads, and by conducting its business in the most economical and efficient manner; and whenever any circumstance may come to his notice that is deemed to be advantageous or detrimental to the interests of the company, whether in his own department or otherwise, he shall immediately report the same to the head of his department for report, if deemed proper, by that officer to the general manager or to the president.

General sum-  
mary of duties  
of officers,  
agents, and  
employes.

14. In case of any disagreement between the heads of departments as to the rights and duties of each, or in case either shall think that the requisitions made by the other on his department are unreasonable, or not for the interest of the company, such matters in dispute shall be referred to the president, whose decision shall be final.

Disagreements  
between heads  
of departments.

Intemperance,  
vice, profanity,  
or incivility of  
employes not  
permitted.

15. No person addicted to the use of intoxicating drinks, or who is vicious, profane, or uncivil in his deportment, shall be employed or continued in the service of the company.

16. Free tickets shall be issued only by the president, general manager, and such other officers as the president may authorize. Division superintendents may pass their immediate employes when in discharge of their duties. All conductors and engine-men are strictly prohibited from allowing any free travel on the road except as authorized by the rules governing free travel and passes.

Issue of  
free tickets.

17. No officer or employe of the company shall be absent from the duties of his post without the consent of the president or the head of the department to which he belongs.

Absence from  
duty.

18. Copies of all circulars or general orders issued by the head of any department shall be sent to the heads of each of the other departments, and also to the president and secretary.

Copies and  
general orders.



## CHAPTER LV.

*CAPITAL STOCK—AMOUNT—VALUE OF SHARES—HOW TO BE  
TRANSFERRED—LIABILITY OF COMPANY  
FOR ILLEGAL.*

**Amount and value of shares.**—Section 2 of the charter provides that the amount of the capital stock may be sixty thousand shares of twenty-five dollars each, but by section 9 of the same charter it is also provided that as soon as the number of forty thousand shares shall have been subscribed, it shall be the duty of the commissioners appointed to declare the same to appoint a time for the stockholders to meet in Nashville, at which time and place they were empowered to elect directors, etc., thus giving authority to commence operating the road under less capital than the sixty thousand shares, if necessary.

The value of the shares was subsequently increased to \$100, under acts Tenn. 1889, ch. 102.

**Special acts authorizing increase of capital.**—The only special act of the legislature authorizing the Nashville & Chattanooga Railroad Company to increase its capital was the act of 1857-8, ch. 161, sec. 4, which permitted it to do so to an amount necessary, with the state's aid, to build the Jasper Branch.

**Amount of capital stock; how increased.**—It is a well settled principle of corporation law that, in the absence of statute or permissive provision in the charter, a corporation has no implied power to increase or diminish the amount of its capital as originally fixed, and every attempt of the corporation to exert such power before it is conferred by any direct or express act of its officers is void. And, even where the power is given to vary the capital, such power cannot be exercised by the directors until they have been authorized by the stockholders. 18 Wall., 233 [21:902]; 13 N. Y., 599; 3 Mason, 308;

26 Ohio St., 673; 30 Conn., 231; 34 N. Y., 30; 54 Pa. St., 270; Boone on Corp., 158; 1 Lea (Tenn.), 408; 6 Pick. (Tenn.), 23; 95 N. Y., 93; 73 Ala., 325; 105 U. S., 143.

Is there anything in the charter, therefore, that gives the right to increase or diminish the capital stock? The only provision on the subject is to be found in section 17, which provides that: "The said company may at any time increase its capital to a sum sufficient to complete the said road and stock it with everything necessary to give it full operation and effect, either by opening books for new stock or by selling such new stock," etc. This section, however, has been construed by the supreme court of Tennessee to give only the limited power to do so in order to complete and equip the road, and for no other purpose. 4 Pick. (Tenn.), 140.

It would follow, therefore, that, unless there is some general law authorizing the company to increase its capital stock at pleasure, it cannot do so, save in the instance above provided for.

Section 1695 of the Code Tenn., (M. & V.) (Shannon's Code) § 2028, provides that "any corporation which may desire to change its name, increase its capital stock, etc., shall have the right to do so, by the board of directors of said corporation copying said amendment, and making an application in these words:

"STATE OF TENNESSEE, ACT OF INCORPORATION. We, the undersigned, comprising the board of directors of [here insert the name of the corporation] apply to the State of Tennessee, by virtue of the general laws of the land, for an amendment to said charter of incorporation, for the purpose of investing said corporation with the power [here state the clause in the general law aforesaid, which is desired as an amendment, or if it be simply to change the name, so state the fact.]

"Witness our hands the — day of —

[To be signed by directors.]"

The instrument shall be probated, etc. Code Tenn. (M. & V.) § 1695; Acts Tenn. 1883, ch. 163, (Shannon's code, § 2028).

This law as incorporated in the code leaves a doubt as to

whether it is applicable to any corporations but those chartered under the general law, but by referring to the act itself [acts Tenn. 1883, ch. 163] it will be found that it expressly provides that "any corporation heretofore chartered by an act of the general assembly, which may desire to change its name, increase its capital stock, etc.," shall have the right to do so in the manner as set out above. This act, therefore, would also apply to the charter of the Nashville & Chattanooga Railroad, although it was chartered by a special act of the legislature.

Again, by the acts of Tennessee, 1881, ch. 9, sec. 1, it was provided that "railroad companies existing under the laws of this state, or of this state and any other state or states, whose original charter of incorporation was granted by this state, are empowered to issue bonds and secure the payment thereof by mortgage upon their franchises and property in any state, or upon any part of such franchises and property, or to issue income or debenture bonds, and such guaranteed preferred and common stock as may be determined upon by the stockholders; *Provided*, The same be approved by the votes of the holders of three-fourths in amount of the entire stock of said company at a regular or called meeting of the stockholders of said company; and that sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of the meeting." Code Tenn. (M. & V.), § 1277; Shannon's Code, § 1542. This act does not repeal act of 1877, ch. 72. 4 Pickle (Tenn.), 140.

Under the above acts the capital stock of the company was increased to \$10,000,000 at the annual meeting of stockholders June 30, 1891.

Section 1901 of the code of Tenn. (M. & V.), (Shannon's code, § 2424), provides that "The board of directors may, at any time, increase the capital stock, if the necessities of the corporation, in their estimation, require said increase." This provision, however, only relates to roads chartered under the general law (acts Tenn., 1875, ch. 142), and hence does not apply to this railway. See, also, acts Tenn., 1897, p. 271.



A better way, however, if it can now be done, which is doubtful under our new constitution of 1870, to increase the capital stock would be to petition the legislature for an amendment to the charter for that purpose as provided for in section 34 of the charter. This would be the safest course in all cases if it could be pursued. For reason see "Charter," sub-head "Amendments to."

Surplus on hand is not capital stock. 11 Pickle (Tenn.), 223, 635.

**Who to vote on ; what vote necessary.**—It will be observed that, should either of the methods as set out above be followed, the only result accomplished would be to give the corporation authority to increase its capital stock. It would not be increased by virtue of the amendment. The stockholders would have to vote upon the question of "increasing" or "not increasing" the capital stock, under the authority thus conferred. The board of directors could not do it. 18 Wall., 233 [21: 902]; 13 N. Y., 599; 26 Ohio St., 673; 30 Conn., 231; 34 N. Y., 30; 54 Pa. St., 270; 1 Lea (Tenn), 408; 105 U. S., 143.

**What vote necessary.**—No specified majority is pointed out in the first act above mentioned, and hence under it a majority by implication would only be necessary. 5 Sneed (Tenn), 566-568. But as the second act above set out (Acts 1881, ch. 9) requires the approval of the holders of three-fourths of the entire stock of said company at a regular or called meeting, prudence should require that this act, in regard to the necessary vote, should be followed, and the courts would doubtless so hold.

**At what meeting to be authorized.**—The provisions of the Acts of Tennessee 1881, ch. 9, should be followed which provides that the vote be taken at "a regular or called meeting" of the stockholders, and that sixty days' notice be given in a Memphis, Knoxville and Nashville daily newspaper of the time, place and purpose of the meeting. See Code Tenn. (M. & V.), § 1277 [Shannon's Code, § 1542.]

**Stock so increased may be sold at discount.**—An active corporation may, for the purpose of paying its debts and obtaining money for the successful prosecution of its business, issue

new stock and sell it for the best price that can be obtained. 139 U. S., 417, [35: 229.]

**Preferred and guaranteed stock; how issued.**—Preferred stock can never be issued unless the authority to issue the same is given by statute, or in the charter, or by agreement between all parties interested. Thompson on Corp., sec. 2244.

There is nothing in the charter of the Nashville & Chattanooga Railroad or amendments thereto authorizing the issue of preferred stock, but under the general law of Tennessee "all railroad companies existing under the laws of this state, or of this state and any other state or states, whose original charter of incorporation was granted by this state, are empowered to issue such guaranteed, preferred and common stock as may be determined upon by the stockholders; *Provided*, The same be approved by the votes of the holders of three-fourths in amount of the entire stock of said company at a regular or called meeting of the stockholders of said company; and that sixty days' notice be given in a Memphis, Knoxville and Nashville daily newspaper of the time, place and purpose of the meeting." Code Tenn. (M. & V.), § 1277; Acts Tenn. 1881, ch. 9, sec. 1 [Shannon's Code, § 1542.]

The supreme court has decided that this act does not repeal the special limitations imposed by acts of Tenn. 1877, ch. 72, upon the power of consolidated railway companies to mortgage. 4 Pickle (Tenn.), 140.

**Stock dividends.**— [See "*Dividends*."] ]

**Value of Shares; how increased.**—The original value of each share of stock was twenty-five dollars. [Charter, sec. 2.] No power is given the railway in its charter, or amendments thereto, to increase the value of the shares, but under the general law, by acts of Tenn., 1889, ch. 102, it was provided "that any corporation hereafter created, or hereafter to be created, under the laws of the state of Tennessee, may make a share of stock one hundred dollars, or less, and issue certificates therefor, and that any such corporation which has heretofore issued shares of stock for twenty-five dollars may call in the same, and combine four such shares and issue a certificate for one hundred dollars in lieu." Acts. Tenn., 1889,

ch. 102. Under this act the railway issued new certificates, for \$100 each, as provided above, in place of the original, as per resolution, adopted May 30, 1889.

**Shares of stock; how to be transferred.**—The charter of the railway company provides that “the stock of said company may be transferred in such manner and form as may be directed by the by-laws of said corporation.” Charter, sec. 16, p. 10 herein. The company subsequently enacted the following by-laws upon the subject:

“Certificates of stock shall be issued to the stockholders and transfers of them made when required.” See p. 648, herein.

“The secretary shall see that all certificates of stock are countersigned by the transfer agent and the register, and that no transfers are made except on the stockholders signing in person or by attorney.” See p. 650, herein.

“No transfer shall be allowed without the surrender of the certificate transferred, and such certificate shall be canceled and filed.” See p. 650, herein.

“No transfer of stock shall be made for ten days next preceding any meeting of the stockholders, nor for ten days prior to the payment of a dividend.” See p. 650, herein.

“. . . No certificate of stock hereafter issued in Nashville shall be valid or binding on this company unless registered and countersigned before issue by the said register of transfers in Nashville; and no certificate of stock issued in New York shall be valid or binding on this company unless registered and countersigned before issue by the said register of transfers in New York, and no certificate of stock shall be accepted for transfer and cancellation unless so registered,” etc. See p. 651, herein.

**Lost certificates; how supplied.**—“Any person or persons claiming a certificate or evidence of stock, to be issued in lieu of one lost or destroyed, shall advertise the same in one or more newspapers in Nashville, Tenn., twice a week for four weeks, giving the number and date of the certificate lost, and the number of shares it represented. The party shall then make application to the board of directors, describing the certificate by



its number, date, and amount, and give full details as to the manner of loss, verified by oath or affirmation, and accompanied by a copy of the advertisement, and also a bond of indemnity, with satisfactory security, in at least double the amount of the par value of the shares represented by the certificate, against any loss or damage that may arise from the issuing of a new certificate, whereupon the board may direct the issue of a new certificate of the same tenor with the one alleged to have been lost or destroyed, specifying upon the face of the certificate that it is in lieu thereof and a duplicate." See p. 648, herein.

**Liability of company in regard to transfers.**—Rules requiring the transfer of stock on the books of the company are made solely for the benefit of the company. They do not affect the title of the transferee. His title is perfect as between himself and the transferer, and the transferee is entitled, upon presentation to the corporation of his certificate, to have himself registered on its books as the real owner. This is so whether the transfer is made by absolute sale or by way of pledge, and whether it is written or not. 12 Pick. (Tenn.), 253; 91 Tenn., 221; 3 Lea, 25; 7 Lea, 1; 85 Tenn., 683; 86 Tenn., 252; 13 Lea, 333. See, also, 7 Pick. (Tenn.), 221

The company, however, is benefited by such a by-law, in knowing who is entitled to vote, and to whom to pay dividends.

*Same.* If the transfer is not made on the books of the corporation when assignment is made, and company, without notice, mails a check for dividends to the party whose name appears on the books as the lawful holder, the company is protected. So, until transfer is made, the transferer may vote. Thompson on Corp., sec. 732, 3872. The company will be protected in transferring shares on books to assignee, even though assignor is an infant, if stock appears in his name, and he does not avoid before transfer on books. 7 Pick. (Tenn.), 223. The company will be compelled to reinstate stockholder whose shares have been wrongfully transferred on the books. 9 Pick. (Tenn.), 482. But as to stock affected with trusts, see 7 Pick. (Tenn.), 222.

A corporation whose stock is transferable only on the books

becomes custodian of the shares, and trustee for the shareholders, and must exercise due and proper diligence to protect all parties interested from unauthorized transfers; and, therefore, if such corporation, with notice of the rights of a *cestui que trust*, aids the trustee in converting to his own use, by transferring certificate, it is liable. 85 Tenn., 683. A by-law imposing restraints upon the alienation of stock is void. 3 Lea, 6. See, also, 17 Pick. (Tenn.), 354. Suits for conversion of stock barred in three years. 11 Pick. (Tenn.), p. 396.

### DUTY OF COMPANY TO INVESTIGATE BEFORE TRANSFERRING SHARES IN CERTAIN CASES AND LIABILITY FOR FAILURE.

1. **Where shares in name of trustee, who to assign.**—If the shares appear upon the books of the company in the name of any one as trustee, this puts the company on notice and inquiry as to the power of the trustee to sell, and no transfer should be made until his power to sell as trustee is shown, otherwise the company will be liable. 91 Tenn., 236; Lowell on Transfer of Stocks, §§ 99, 100, 138, 149, 150, 153; 85 Tenn., 683.

2. **Where shares are held in trust, generally.**—Where the assignment is made by the person appearing on the books to be the absolute owner, but the assignment is a breach of trust, then the liability of the company to the *cestui que trust* for transferring such shares depends not only upon its being shown that the corporation had either actual or constructive notice of the breach of trust, but upon the further fact that its act in recognizing the assignment and making the transfer operated to aid the breach of trust and contributed directly to the loss of the stock by the *cestui que trust*. 7 Pick. (Tenn.), 233; Lowell on Transfer of Stocks, § 153. Any fact that would put the company on notice that the stock was held in trust should require an investigation before transferring. Thus, where stock is issued to one as devisee under and subject to the

provisions of a will, it is chargeable with notice of the contents of that will, and of the trusts imposed thereby, in all subsequent dealings with such shares. 85 Tenn., 683, 33.

**3. Where stock is assigned by other than the one to whom it was issued.**—If the stock is assigned by one, other than the person to whom it was issued, it devolves upon the company, when called upon to transfer the shares and issue a new certificate, to inquire and determine the power of the assignor to assign. 91 Tenn., 230; Cook on Stock and Stockholders, § 326.

**4. Where stock assigned by administrator.**—If the assignment is made by a person as "administrator," and company makes no inquiry, it assumes the risk only of the assignor having the power to assign. If, however, it is signed, "administrator, *cum testamento annexo*," then the company would be put on notice of a will, and should examine to see what trusts or limitations are placed thereon. 7 Pick. (Tenn.), 229, 230.

**5. Where assignment is forged, or by void decree.**—If a corporation transfer shares upon a forged assignment and power of attorney, or upon the authority of one wrongfully assuming to be the agent of the owner, or upon a void decree or judgment, its act would be a nullity, in so far as it was thereby sought to affect the rights or status of the true owner. Such owner would remain a shareholder, regardless of the illegal cancellation of the evidence of his right, and notwithstanding the issuance of a new certificate to the transferee. His right would be no more affected than if his certificate had been accidentally destroyed. A court of equity would compel the corporation to recognize him as a shareholder by the issuance of a new certificate and compel an accounting for dividends wrongfully paid over to the transferee. 91 Tenn., 233; 97 U. S., 369; 127 U. S., 614; 96 U. S., 193; 7 N. Y., 274; 125 Mass., 138; 44 Md., 551.

**6. Where shares in name of partners.**—A partner may sell and transfer partnership stock. 10 Mass., 476; Elliott on R. R., sec. 93. But, if it is in the name of two or more persons, as joint owners, one of them cannot transfer the interest of the others. 57 Barb. (N. Y.), 127; Elliott on R. R., sec. 93.



7. **Where shares in name of infants.**—The transfer of shares by a minor is voidable, not void. It is one of those acts which may or may not be to the interest of the minor. To say that every sale of shares by a minor was void would be disastrous to them in most cases. It is like the sale of lands or any other sort of property by a minor. The rule in this state, therefore, is that an assignment of stock by a minor is good until avoided, and a corporation will be protected if it makes the transfer before notice of avoidance by the minor. In fact our courts hold that a corporation has no right to refuse to make the transfer if an avoidance has not been made at date of transfer. 7 Pickle (Tenn.), 221-239; 10 Am. & Eng. Enc. L., 635; Cook on Stocks, secs. 318, 427.

**May subscribe for or purchase stock, etc., in other companies.**—[In Tennessee.] “It shall be lawful for any railroad company created by and existing under the laws of this state, and for any lessees of a railroad of such company, from time to time, to subscribe for or purchase the stock and bonds, or either, of any other railroad company or companies chartered by or of which the road or roads is or are authorized to extend into this state, when their roads shall be directly, or by means of intervening railroads, connected with each other,” etc. Code Tenn. (M. & V.), § 1262; Shannon’s code, § 1520.

But for this enabling statute the railway could not purchase such stock, as there is no authority conferred in its charter to do so. The authority here conferred, moreover, is not in the nature of a contract, and can be repealed by any subsequent legislature, though such repeal would not affect purchases previously made thereunder. The unauthorized purchase by one corporation of the shares of another is *ultra vires* and void. No suit can be maintained by either party in furtherance or affirmance of such void contract, not even by a party who has fully executed the contract on his own part. Such illegal contract would create no estoppel upon either party. 131 U. S., 389; 139 U. S., 60; 8 Pick. (Tenn.), 115.

[In Alabama.] Under the acts of Ala., 1898-99, p. 28, the Nashville, Chattanooga & St. Louis Railway has the power to

purchase, hold, and use any or all of the capital stock of any railroad company of Alabama with which it or its predecessor in interest connects either directly or by an intervening line. The courts of Alabama refuse to interfere with such purchases unless it is shown that the business interests of the two corporations are antagonistic, and that the company owning the majority of the stock is using it to the manifest disadvantage of the minority. 101 Ala., 607; 93 Ala., 610; 88 Ala., 630.

[In Georgia.] The constitution of Georgia provides that "the general assembly of this state shall have no power to authorize any corporation to buy shares of stock in any other corporation in this state, or elsewhere, or to make any contract or agreement whatever with any such corporation which may have the effect or be intended to have the effect to defeat or lessen competition in their respective businesses, or to encourage monopoly, and all such contracts and agreements shall be illegal and void." Code Ga., 1895, § 5800.

By § 3091 of same code it is provided that "the natural increase of the property belongs to the tenant for life. Any extraordinary accumulation of the corpus, such as issue of new stock upon the shares of an incorporated or joint stock company, attaches to the corpus and goes with it to the remainderman. Same, § 3091.

See 67 Ga., 284; 93 Ga., 678, 680.

By section 2179 of the same code it is provided that "any railroad company incorporated under the provisions of this article shall have authority to sell, lease, assign or transfer its stock, property, and franchises to, or to consolidate the same with, those of any other railroad company incorporated under the laws of this or any other state or of the United States, whose railroad within or without this state shall connect with or form a continuous line with the railroad of the company incorporated under this law, upon such terms as may be agreed upon; and conversely, and such corporation organized under the provisions of this article may purchase, lease, consolidate with, absorb or merge into itself the stock, property and franchises of any other railroad company incorporated under the laws of this

or any other state or the United States, whose railroad company within or without this state shall connect with or form a continuous line or system with the railroad of such company incorporated under this law, upon such terms as may be agreed upon. Code Ga. 1895, § 2179.

Section 5799 of the same code provides that the general assembly shall not alter the charter of, nor pass any other general or special law for the benefit of said corporation, except upon the condition that such corporation shall thereafter hold its charter subject to the provisions of the state constitution, etc. The section provided, however, that it should not apply to any amendment for the purpose of allowing any existing road to take stock in or aid in the building of any branch road. Code Ga. 1895, § 5799.

[In Kentucky.] Any corporation . . . may, unless prohibited by law, subscribe to the capital stock of any other railroad company organized under the law of this or any other state, with the assent of such company; and any company organized under the laws of this or any other state may, unless prohibited by law, subscribe to the capital stock of any company organized under this law, with the assent of such company, and may make any agreement or arrangement, not inconsistent with law, with any other railroad company.

1. **Parallel or competing lines.**—By section 201 of the constitution of Kentucky, it is prohibited to consolidate capital stock franchises or pool earnings with any parallel or competing line. Code Ky. 1894, § 201.

**Reduction of capital stock.**—A corporation has no power to reduce the amount of its capital stock by purchase and cancellation of its own shares. 88 Tenn., 476.

**Entire amount of stock may be transferred to one person without working a dissolution of corporation.**—12 Pickle (Tenn.), 252.

**All stock personal property and subject to levy and sale.**—[In Tennessee.] The stock in all railroads chartered in Tennessee is personal property and subject to sale by execution. Code Tenn. (S.), § 4762, see also § 2066; M. & V., § 3747.



1. Stock may also be reached by attachment in equity under § 3500 of the code of Tenn. (S.), § 5260; (M. & V.) 4241. See, also, 1 Heis., 33; 5 Lea, 702; 1 Pickle, 194.

2. Stock of a foreign corporation doing business in this state, has its *situs* in this state, and may be here attached for the debt as a nonresident owner, although the certificate may be in his possession and beyond the limits of the state at time of attachment. 1 Pickle (Tenn.), 189.

3. The above section seems to apply to corporations chartered by special act only, from a reading of the original, though it is put in the code as applicable to all.

4. [In Alabama.] Stock is also personal property in Alabama. Code 1896, § 1261.

5. [In Georgia.] It is also personal property in Georgia. Code 1895, § 2165.

**When stock passes by transfer of certificate.**—See 12 Pick. (Tenn.), 253.

**Counties and cities may subscribe for stock in proposed railroads.**—[In Tennessee.] Counties and incorporated cities may subscribe for stock in or loan its credit to railroads under certain conditions. See code Tenn. (S.), §§ 1542–1572. See, also, acts Tenn., 1887, ch. 3, as codified in code Tenn. (S.) as § 1558 *et seq.*, for additional method. See, also, 9 Pick. (Tenn.), 239, for discussion of same.

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## CHAPTER LVI.

### CHARTER—HOW AMENDED—FRANCHISES OF—WHAT MAY BE DISPOSED OF—CHANCERY COURT AMENDMENTS TO—GROUNDS OF FORFEITURE OF.

**When charter of Nashville, Chattanooga & St. Louis Railway granted, and status before the law.**—Charters are public laws, and need not be given in evidence where the corporation, though private, is created for public purposes. 2 Hum., 339; 5 Sneed, 347, 495; 11 Hum., 219; 7 Hum., 33; 3 Sneed, 87; 1 Cold., 625; 4 Pick., 140; 74 Ga., 509.

In Alabama, where the corporation is not organized under the general law, its charter is a private act, of which the courts cannot take judicial notice, and in the chancery court it must

be pleaded as well as proved, though at law it need not be pleaded. Code Ala., 1876, § 3051. See, also, 55 Ala., 413; 58 Ala., 489.

The charter of the Nashville & Chattanooga Railroad Company, whose name has subsequently been changed to the Nashville, Chattanooga & St. Louis Railway, by decree of the chancery court at Nashville, Tenn., in minute book "X," p. 222, was chartered by the legislature of 1845-46, ch. 1, which was prior to the constitution of 1870. It has never been chartered in any other state.

After the lease of the Paducah, Tennessee & Alabama Railroad (see p. 487 herein) by the Nashville, Chattanooga & St. Louis Railway, the secretary of state of Kentucky held that, under sec. 190 of the constitution of that state, and under §§ 570, 765 and 841 of the code of Kentucky, 1894, that the said road could not be legally operated until the charter of the Nashville, Chattanooga & St. Louis Railway, properly authenticated as therein provided for, should be filed with the secretary of state and railroad commissioners, and further file with the secretary of state its acceptance of the constitution of the state. In conformity to this holding, the board of directors of the Nashville, Chattanooga & St. Louis Railway, on January 21, 1899, accepted the constitution of Kentucky, and filed a copy of the same, with its charter, with the secretary of state of Kentucky, on February 25, 1899, and with the railroad commission on the same day.

**How amended.**—The legislature in granting the charter did not reserve the right to modify, amend, or repeal the same, or any part thereof, but specifically enacted, in section 34 of said charter, that "This charter shall be amendable from time to time by the legislature, whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments; and when such amendments shall be adopted by the legislature, and submitted to the directors, and be accepted and adopted unanimously by the president and directors, they shall be obligatory on the stockholders, and not otherwise."

**Legislature cannot force amendments.**—As will be seen from this, it will require the consent of the president and directors before any future amendments can be made by the legislature to the charter. The legislature cannot thrust an amendment upon it or enforce the abrogation of any right directly conferred. Every section which was legal in itself at the time of its enactment, and which confers a specific

right to build and operate a railroad, together with all franchises, privileges, or licenses in the nature of property, and not merely personal privileges, was in the nature of a contract, and, as such, is under the protection of the constitution of the United States, and is irrevocable and inviolable by any act of the legislature, or even a constitutional convention of the state, without the consent of the corporation.

*United States authorities.*—80 U. S., 568 (13 Wall., 264); 83 U. S., 326 (16 Wall., 244); 87 U. S., 282 (20 Wall., 36); 4 Wheaton U. S., 468; 117 U. S., 129.

*State authorities.*—9 Bax., 442; 3 Cold., 88, 496; 1 Sneed, 114; 9 Yer., 488; 11 Lea, 336; 3 Hum., 305; 1 Heis., 284; 3 Tenn. Ch., 465, 13 Lea, 400; 2 Pick., 614; 3 Pick., 155; 1 Head, 81; 3 Sneed, 629.

**Amendments accepted and adopted are valid, though not petitioned for.**—An amendment, however, accepted and adopted by the president and directors, unanimously, will be valid, although not recommended by the unanimous petition of the president and directors, that being merely directory. 8 Bax., 108. See also case of *Rogers v. Nashville, Chattanooga & St. Louis Railway*.

It is always prudent, however, to petition specially for amendments, as provided above, if it can now be done, since the constitution of 1870, which is doubtful, as many acts of the legislature offering them are coupled with a clause or condition that, if accepted, would render the company liable to taxation on its capital stock that is now exempt forever, or render its charter liable to be amended without its consent, as at present. If offered amendments, therefore, are ever accepted, care should be taken to see that no such conditions accompany them. No amendments adopted so far render the company liable.

The charters of the various roads now owned or controlled by the Nashville, Chattanooga & St. Louis Railway have also clauses upon this subject, which can be found in this compilation under their respective headings and charters.

**Legislature may pass amendments and enabling acts enlarging powers, when.**—It is generally conceded that if the



amendment offered by the legislature enlarges the powers originally granted without objectionable provisos, conditions, etc., that it can be made. Thus by conferring upon a corporation the power to sell, for its own benefit, its real estate, although the charter forbids such alienation. 57 Pa. St., 213; 29 Ala., 651; 13 Lea (Tenn.), 401. "Where the legislature has conferred enlarged powers upon the managers of a corporation, with the assent of a majority of the stockholders, a single stockholder cannot, it has been held, by withholding his assent, hinder the execution of such powers. 54 Pa. St., 270. But the legislature cannot pass enabling acts which operate to interfere with rights already vested." *Thomp. on Corp.*, sec. 5396.

"Grants beneficial to a corporation will be presumed to have been accepted by it, when nothing appears to the contrary, the same as grants to natural persons. 47 Maine, 34; 7 Pick., 344; 17 Maine, 442. If in such case the act by which the benefit is conferred do not expressly require a formal acceptance, then none such is necessary to enable a corporation to avail itself thereof. 47 Maine, 34; 17 Maine, 442; More especially so if the corporation proceeds to do the acts or exercise the powers which are contemplated by the grant, or in any manner avails itself thereof." 12 Wheat. (U. S.), 64; 10 Bush, 529; 47 Maine, 34; 66 Mo., 228; cited by Rorer on Railroads, 19. See also 8 Pick., 168.

**Such amendments and enabling acts, however, not protected as contracts, and can be repealed at pleasure.**—As has heretofore been explained, all franchises, privileges or licenses in the nature of property, and not merely personal privileges, contained in the original charter, are in the nature of contracts and cannot be impaired by subsequent legislation. There is a distinction, however, between such franchises and those granted after incorporation by way of mere gratuity. Those contained in the charter and accepted are protected as contracts, the latter are not. Thus it has been held that an amendment to a charter which merely conferred a new right,

or enlarged an old one, without imposing any additional burden, is a mere license or promise by the state which the legislature may revoke at pleasure. 102 Pa. St., 123. Of this kind also are all enabling acts. For instance, there is no authority conferred in the charter of the Nashville, Chattanooga & St. Louis Railway, or amendments thereto, authorizing it to mortgage its road, etc. The legislature has passed enabling acts, which are now a part of the general law of the state, permitting all railways to mortgage their property. Such acts, however, are merely gratuitous and may be revoked at pleasure, though, of course, in such an event no mortgage executed in conformity to the present law would be affected thereby. See *Thomp. on Corp.*, § 5435.

**What are the present franchises of the Nashville, Chattanooga & St. Louis Railway.**—The original charter of the Nashville & Chattanooga Railroad Company was granted by the acts of Tenn. of 1845–6, ch. 1. Its name was subsequently changed to the Nashville, Chattanooga & St. Louis Railway. May 30, 1873, by decree of the chancery court at Nashville, Tenn., under the acts of 1870–1, ch. 54, p. 63, as per minute book “X,” p. 222–224, of said court. It was never chartered in any other state. Subsequent to its incorporation many acts amendatory thereof have been passed. Not only this, but many independent, branch and lateral roads have been added to its original line by purchase, lease, construction or otherwise. Many of these roads had charters of their own, conveying various franchises, privileges, rights and immunities. It will be important to determine how many of these passed with the respective conveyances, in order to ascertain the present franchises of the Nashville, Chattanooga & St. Louis Railway. To do so, the laws in existence at the date of the respective purchases, leases, etc., together with the terms and method of conveyance, will have to be examined. This will be gone into fully in the discussion of the charters, franchises, etc., of the respective roads acquired. For the time being, however, it may be said with confidence that such franchises, rights, privileges and immunities contained in the charters of the various

roads acquired, and which passed to the Nashville, Chattanooga & St. Louis Railway, by virtue thereof, will be confined alone to the line of those roads. See case of *Rogers v. Nashville, Chattanooga & St. Louis Railway* decided at Cincinnati by Judge Lurton of the circuit court of appeals, but which has not yet been reported. On the other hand, it seems to be an open question whether or not those contained in the original charter of the Nashville & Chattanooga Railroad Company do not spread out and embrace all after acquired lines; for the authority to purchase and operate other roads would doubtless by implication change the termini of the original road and constitute the road so purchased a part of its main stem. The subject has never been judicially noticed in Tennessee, but many of the states recognize the soundness of the doctrine. Thus, in New Jersey, it was held that: "Where a railroad sixty-six feet wide is purchased by another company which had power to condemn a hundred feet in width, the latter company, after operating the road for several years, might widen it to a hundred feet. 33 N. J. L., 323; 4 Vroom, 323; Rorer on Railroads, p. 331.

These questions will be discussed more fully in the places mentioned above. Under this head it will be gone into generally, and such application as will be made will relate more particularly to the franchises, etc., contained in the charter and amendments thereto of the original Nashville & Chattanooga Railroad Company, as set out in the acts of Tenn. 1845-6, ch. 1. See p. 1 herein.

1. **In Alabama.** For franchises granted Nashville, Chattanooga & St. Louis Railway in Alabama, see p. 55 herein.

2. **In Georgia.** For franchises granted Nashville, Chattanooga & St. Louis Railway in Georgia, see p. 61 herein.

**What is a franchise.**—Chancellor Kent has said that "franchises are privileges conferred by grants from the government and vested in private individuals, and that they contain an implied covenant on the part of the government not to invade the rights vested, and on the part of the grantee to execute the conditions and duties prescribed in the grant." 3 Kent's Com.,



458: Again, a franchise may be defined as "a privilege or authority vested in certain persons by grant of the sovereign, to exercise powers or to do and perform acts which without such grant they could not do or perform." Lewis on Em. Dom., sec. 135. Mr. Thompson, in his work on corporations, quotes the following from Chief Justice Horton, of Kansas: "The word 'franchise' is generally used to designate a right or privilege conferred by law. What is called 'the franchise of forming a corporation' is really but an exemption from the general rule of the common law prohibiting the formation of corporations. All persons in this state have now the right of forming corporate associations upon complying with the simple formalities prescribed by the statute. The right of forming a corporation, and of acting in a corporate capacity, under the general laws, can be called a franchise only in the sense in which the right of forming a limited partnership, or of executing a conveyance of land by deed, is a franchise." 40 Kan., 96.

**Different kinds of franchises.**—There are two kinds of franchises, primary and secondary. The first is the franchise of being a corporation with succession of members—of having a corporate existence. The second is the franchise of holding particular property, carrying on a particular business, etc. Thompson on Corp., sec. 5353.

**How alienated.**—The supreme court of Tennessee has decided that the franchise to be a corporation is not the subject of sale and transfer, unless by some positive provision of statute law pointing out the mode. It was also decided that the franchise to form a corporation and act in a corporate capacity means the power to charter a new corporation by appointing the incorporators, and that such a power is legislative and cannot be presumed from a mere authority to sell the property and franchises of an existing corporation. 9 Lea, 613, 614; 21 Law Rep., 138; 53 Ala., 237; 22 Ohio St., 428; 3 Tenn. Chy., 602; Thompson on Corp., sec 5353.

It was once decided in Tennessee that the secondary franchises—that is, the franchises to build or own and manage a railroad, and to take tolls thereon, are not necessarily corpo-

rate rights; that they are capable of existing in and being enjoyed by natural persons, and there is nothing in their nature inconsistent with their being assignable; that the franchises thus sold would be such as appertain to the use of the property, and without which the road would be of little value. 9 Lea, 613; 93 U. S., 217.

This decision, however, seems to have been receded from, in so far as it implies the right of a railway company, or corporation having a public duty to perform, to assign their secondary franchises without positive legislative authority. Thus it has subsequently been held that the powers of a railway corporation to execute a mortgage of its franchises or of corporate property essential to its operation, must be expressly conferred by statute; and further, that such a corporation cannot, without express authority, abdicate the functions and duties imposed for public purposes by either a sale or a lease, and for the same reason it may not make a mortgage, for a foreclosure would bring about a sale and abandonment of its powers and responsibilities. 4 Pick. (Tenn.), 152, 153; 15 Lea, 104.

This holding seems to be in line with the great weight of modern authority. Jones on Railroad Securities, secs. 1-10; 86 Tenn., 603; 101 U. S., 71; Elliott on Railroads, secs. 519, 68; Thompson on Corp., secs. 5353, 5356, 5370; 130 U. S., 1; 139 U. S., 24; 128 U. S., 174.

**1. Same. May alienate secondary franchise by statute; how.**—[In Tennessee.] All corporations now or hereafter existing under the laws of this state, whether incorporated under special or general laws of the state, shall have the power, and they are hereby authorized and empowered, to lease and dispose of their property and franchises, or any part thereof, to any corporation of this or any other state engaged in or carrying on, or authorized by its charter to carry on in this or any other state the same general business as is authorized by the charter of any such lessor corporation; and said corporations shall likewise have the power, and are hereby authorized to make any contract for the use, enjoyment, and operation of their property and franchises, or any part thereof,

with any such other corporation of this or any other state, on such terms and conditions as may be agreed upon between the contracting corporations; and such lessee corporation or corporations is authorized and empowered to make and carry out such leases and contracts; *Provided, however*, That any such leases or contracts, when made by or under the direction of the board of directors of the contracting corporations, shall be authorized or approved by the vote of a majority, in amount, of the stock of the lessor corporations present or represented at a regular or called meeting of the stockholders of said corporation; *And provided further*, That sixty days' notice of such meeting be given in a Memphis, Nashville, and Knoxville daily newspaper of the time, place, and purpose of such meeting; *And provided further*, That, where the lessee corporation is a corporation of this state, the authority or approval of its stockholders shall in like manner be obtained to the contract or lease; *And provided further*, That this act shall not be so construed as to authorize any corporation of this or any other state to lease or purchase any railroad and line that is a competitor for the same business with any line already owned or under control, by lease or otherwise, or two lines of railway that are competitors for the same business in this state. Acts Tenn. 1887, ch. 198; code Tenn. (S.), 2043;

2. All railway companies of this state, and any other state or states, are authorized and empowered to build, lease or let, acquire by purchase, lease, or otherwise, and operate, hold, or dispose of any railroad or railroads in any state or states, or any parts or portions of any such railroad or railroads, and the distribution thereof, as may be determined upon by their stockholders . . . *Provided*, That the same be approved by the votes of three-fourths in amount of the capital stock of said company present and voting, either in person or by written proxy, at a regular or called meeting of the stockholders of said company; *And provided further*, That sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of the meeting. Acts Tenn., 1881, ch. 9, sec. 2, as amended by the acts of Tenn., 1891, ch. 61; code Tenn. (S.), 1540.



The supreme court of Tennessee has decided that the acts of 1881, ch. 9, as above set out, do not repeal the special limitations imposed by acts of 1877, ch. 72, upon the power of consolidated companies to make mortgages of their property. 4 Pick., 140.

**1. Railway companies may also purchase franchises of other companies.**—[In Tennessee.] Under the acts of 1871, ch. 69, which superseded the acts of 1871, ch. 22, it is provided that: "Every railroad corporation in this state, whether created under a general or special law, shall have the power to acquire by purchase, or other lawful contract, and have, hold, use and operate any railroad, with its franchises, belonging to any other railroad corporation; and likewise to have, hold, use and operate any such railroad, with its franchises, which it may have heretofore purchased or acquired. Code Tenn. (M. & V.) § 1250; (Shannon's Code, § 1509).

**2. Same. At judicial sales, etc.**—Prior to this time, however, the legislature had passed an act (acts Tenn. 1870-71, ch. 23, sec. 10) which provided that: "All the rights, privileges, and immunities appertaining to the franchises sold under the judicial proceedings instituted against delinquent railroads by the state under the act of incorporation, and the amendments thereto, and the general internal improvement law of the state, and acts amendatory thereof, shall be transferred to, and vest in, the purchaser, who shall hold the same subject to all the liens and liabilities in favor of the state as now provided by law against the railroad companies." Code Tenn. (M. & V.), § 1253; (Shannon's Code § 1512).

**3. Same.**—By acts of Tenn. 1877, ch. 12, sec. 1, it was provided that: "The purchasers of any railroad chartered by this state, and lying in whole or in part in this state, sold under any mortgage heretofore or hereafter executed by it, when put in possession of said railroad by any court of competent jurisdiction, shall have the same right to operate the same in this state as the incorporated company which executed the mortgage." Code Tenn. (M. & V.), § 1254; (Shannon's Code, § 1513).

**4. Same.**—By acts of Tennessee 1879, ch. 52, sec. 2, it was provided that: "Whenever the property and franchises of any

railroad have been sold, or may hereafter be sold, under any judgment, decree, or process from any of the courts of record of this state, for the payment of any debt due from said incorporated company, the purchasers at said sale, or their assignees, may organize into a corporate company or body, with the right to have, hold, and operate the property and franchises so purchased, with all powers, rights, privileges, and immunities, and subject to all the restrictions imposed by the original charter and amendments thereto of the corporation whose property and franchises have been sold." Code Tenn. (M. & V.) § 1255; code (S.), § 1513 *a*.

5. **Same.**—By acts Tenn. 1877, ch. 12, sec. 2, it was provided that: "When a mortgage upon a railroad lying within the state, either in whole or in part, shall be foreclosed in any court of this or of the United States having jurisdiction thereof, by sale under said mortgage, the purchasers at said sale shall be entitled to and be invested with the said franchises and property, and with all the rights, privileges, and immunities appertaining thereto by the laws of this state, in the act of incorporation of said company, and the amendments thereto, and the general internal improvement law, or other laws of this state, in as full a manner as the said company or companies are or were." Code Tenn. (M. & V.), § 1256; (S.) code, § 1514.

6. **Same. Purchasers may reorganize.**—It is further provided that: "The purchasers at the sale mentioned in the preceding section may, after being put in possession of said property, meet together, adopt a name for the company or corporation to operate said railroad, and elect a board of directors of not less than three, at least one of whom shall reside in this state." Code Tenn. (M. & V.), § 1257; (S.) code, § 1515; acts Tenn. 1877, ch. 12, sec. 3.

7. **Same. Exemptions from taxation do not pass.**—It is expressly provided, however, by acts of Tenn. 1877, ch. 12, sec. 2, and 1877, ch. 72, sec. 3, that no exemption from taxation which was granted by the original charters shall pass to the purchasers at mortgage or judicial sales.

8. **Same. Purchase.**—By acts Tenn., 1885, ch. 84, p. 171, sec. 1, it is provided that “when any corporation of this state may mortgage or has heretofore mortgaged its property and franchises under the provisions of its charter, or the general laws of this state, and said mortgage has been, or shall hereafter be, foreclosed under a power of sale given in said mortgage, or the decree of any court of this state or the United States, then and in that case the purchaser at said sale shall, by virtue thereof, be entitled to and be invested with the said property and franchises, and with all the rights, privileges, and immunities appertaining thereto under the act of incorporation of said company, the amendments thereto, or the general laws of this state in as full a manner as the said corporation or company is or was entitled.” Acts Tenn., 1885, ch. 84, p. 171, sec. 1. It is expressly provided, however, in sec. 5 of said act of Tenn., 1885, ch. 84, “that no exemption from taxation existing under the charter of said road so sold should pass to the purchasers.”

**Nonuser of franchise, no forfeiture of.**—By acts Tenn., 1887, ch. 190, p. 323, sec. 3, it is provided that “the non-user by any company incorporated in this state of a part of its powers, privileges, or franchises, shall not have the effect to forfeit or to affect any franchise, right, power, privilege or immunity contained in its charter.” Code Tenn. (Shannon), § 2042. This was the law, however, before the passage of the above act. 10 Lea, 436, 443; 8 Bax. 235; 7 Cold. 420; 12 Pick. 253; 15 Lea, 104, 110.

**Portions of franchise not vendible.**—It is now generally accepted as true that the franchises of a corporation cannot be split up or divided so as to enable the corporation to retain a part and transfer the balance. Thus, where the charter of a railway provided “that the capital stock of said company shall be exempt from taxation, and its works, fixtures, workshops, etc., be exempt from taxation for ten years,” and the corporation had a part of its road sold under a mortgage that assumed to convey “the appurtenances, rights, and franchises of the company applicable to this portion of the road,” it was



held that the exemption from taxation was a franchise of such a nature that it did not pass by the sale of a portion of the property. *Thomp. on Corp.*, sec. 5367, citing 93 U. S., 217.

**Certain property necessary to the exercise of the franchises not vendible, when.**—A corporation cannot, without the express sanction of the state, alien any property necessary to the possession and enjoyment of its inalienable franchises; that is to say, such property as is necessary, either (1) to the exercise of its franchise to be a corporation, or (2) to the discharge of the public duties in consideration of which its franchises have been granted. *Thomp. on Corp.*, sec. 5373.

All of the foregoing fundamental principles, together with others hereafter mentioned, will have to be borne in mind in discussing what franchises, rights, and immunities have passed to this company in the purchase or lease of the various roads that now form a part of its general system. They will again be referred to under the analysis of their respective charters.

**What franchises in the charter of the Nashville & Chattanooga Railroad Company are protected as contracts.**—Analyzing the charter we find the following franchises, privileges or licenses among the most important that may be considered in the nature of property and within the above constitutional protection. As will also be shown, some were mere personal privileges and void.

**The franchise to be a corporation, protected.**—Under the above authorities, the right to be a body corporate with perpetual succession of members is insured until dissolved for cause. Charter, sec. 1, p. 1 herein. See 71 Mo., 526; *Thompson on Corp.*, sec. 5658.

**The franchise to buy and sell real and personal estate, etc., protected.**—Under the above authorities, the right to buy, receive by gift, hold, sell and convey real and personal estate as provided in the charter is insured. Charter, sec. 1.

**The franchise to contract, sue and be sued, make by-laws, etc., protected.**—Under the same authorities, the right to make contracts, sue and be sued, to make by-laws and do all lawful acts properly incident to a corporation, and necessary and

proper to the transaction of the business for which it is incorporated, and to have and use a common seal, and the same to alter and destroy at pleasure, is also insured. Charter, sec. 1.

**The franchise of operating the railway between the termini, to the exclusion of all others within twenty miles of route adopted, protected.**—Section 13 of the railway charter provides that: “After the route of such railroad shall have been accurately surveyed and adopted, and a plat thereof deposited in the office of the secretary of state, it shall not be lawful for any other railroad to be built, cut, or constructed, in any way or manner, or by any authority whatever, running laterally within twenty miles of the route so adopted, unless by said company, or with the consent of the board of directors thereof for the time being.” Charter, sec. 13, p. 9, herein.

This section has never been construed by the supreme court of Tennessee, but will doubtless be upheld if tested. At the time the railway charter was granted, which was prior to the constitution of 1870, there was nothing in either the constitution of the United States nor of the State of Tennessee which prevented the legislature from granting monopolies or exclusive privileges. It has often been held that such a grant, when accepted by the corporation, is in the nature of a contract, and that the obligation cannot be impaired by granting the same privilege to others (17 Conn., 40; S. C., 42 Am. Dec., 716), the obligation being that the state will not permit a similar railway to be built within the prescribed limits. 1 Wall. (U. S.), 116; 3 Wall. (U. S.), 51; 73 Iowa, 513; 25 Wend. (N. Y.), 628; 47 Me., 189, 208; 115 U. S., 650, 683; 7 N. H., 35; 4 Mich., 361; 13 Howard, 71; 55 Conn., 1; 120 U. S., 64; 14 Fed. Rep., 194; 22 Cal., 398; 5 How. (Miss.), 503; 11 La. Ann., 253. See also 15 Pick. (Tenn.), 684; 96 Ga., 562.

The privilege, however, may doubtless be appropriated for public use, upon just compensation being paid therefor, under the power of eminent domain. In such a case, however, the railway desiring to construct its road within the twenty miles would be compelled to compensate the Nashville, Chattanooga & St. Louis Railway therefor. Thompson on Corp., sec.

5398. For discussion of this, see "Eminent Domain," herein. Refer to index.

**The exemption from compulsory amendments to charter protected.**—Neither a subsequent legislature nor a constitutional convention can thrust an amendment of its charter upon the railway. See discussion in first part of this chapter.

**The exclusive right of transportation over the road, protected.**—Under the authorities given in the foregoing sections, the grant contained, in section 14 of the railway charter, that "the company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, and produce over the said railroad by them to be constructed; *Provided*, etc.," is protected as a contract. This section, however, is subservient to the power of eminent domain, as the state cannot bargain away its sovereign power, and any act attempting to divest it of the power would be void. 18 Conn., 451; 14 Am. & Eng. Corp. Cas., 417; 102 Pa. Stat., 123; 48 Mich., 433; 53 Ala., 211; 65 Ga., 160; 7 N. H., 35; Lewis on Em. Dom., sec. 275.

As to whether the power of eminent domain could be invoked so as to enable one railway to condemn the property of another, or the joint use of its tracks, except for crossings [see discussion and authorities under heading "Eminent Domain," herein.]

**The right to condemn property, protected.**—Section 24 of the railway charter, which provides that "where any lands or right of way may be required by the said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated, etc.," together with section 25, which provides that, in the absence of any contract, the owners of land to apply for such assessment in five years, or be barred, etc., and that the railway will, in such cases, be presumed to have had granted it the land on which its road is constructed, together with a space of one hundred feet on each side of the center of said road, etc." is also protected.



The right to condemn property for a public use is a franchise, and is one of the inviolable rights which the legislature cannot withdraw, or surround with such conditions upon its exercise as to destroy its value. 14 Wend. (N. Y.), 51 (S. C., 18 Wend. (N. Y.), 9); 31 Am. Dec., 313; Rorer on Railroads, p. 74.

But inasmuch as even irrevocable charters as this one is are not impaired by statutes which merely change existing remedies for the enforcement of civil rights, it would follow that there is only secured to them an immunity from changes of rights, but not from changes of remedies. 24 Ill., 433, s. c., 76 Am. Dec., 755. Hence, where a statute or charter prescribes a mode by which land may be taken for a railway, and the legislature by general act prescribes a different mode, the general act must be followed. 3 S. C., 381; s. c., 16 Am. Rep., 729; cited by Thompson on Corp., secs. 5407, 5437; s. c., 54 Am. Rep., 114.

Hence to this extent this section of the charter may be altered by subsequent legislation. 12 Heis. (Tenn.), 54.

Subsequent legislation has provided general laws for the condemnation of land. [See Eminent Domain.]

As a rule, however, a general law does not repeal a prior special one merely because it embraces the same subject matter. An intent to repeal must be manifest. Lewis on Em. Dom., sec. 248.

**Franchise of erecting and operating warehouses for pay, protected.**—Section 29 of the railway charter provides that: "The said company shall have the right to take at the store-houses they may establish or annex to their railroad, all goods, wares, merchandise, and produce intended for transportation; prescribe the rules of priority, and charge and receive such just and reasonable compensation for storage as they, by rules, may establish (which they shall cause to be published), or as may be fixed by agreement with the owners, which may be distinct from the rates of transportation; *Provided*, That the said company shall not charge or receive storage on goods, wares, merchandise, or produce which may be delivered to them at their regular depositories for immediate transportation,

and which the company may have the power of transporting immediately."

This franchise of charging and receiving storage is also in the nature of a contract and cannot be altered or repealed by subsequent legislation. See same general authorities.

**Exemption from taxation, protected.**—Section 38 of the railway charter provides that "the capital stock of said company shall be forever exempt from taxation, and the road, with all its fixtures and appurtenances, including the workshops, warehouses, and vehicles of transportation, shall be exempt from taxation for the period of twenty years from the completion of the road, and no longer."

This is one of the most valuable franchises granted, and has been declared, in a long and unbroken chain of authorities, to be a contract between the incorporators and the state, and as such is irrevocable and inviolable. [See same general authorities cited in foregoing sections.]

**Implied rights, though not expressed in charter, protected.**—All rights necessary to enable the corporation to enjoy those which are expressly granted are implied, and are equally protected with the express ones. *Thomp. on Corp.*, sec. 5393.

**Exemption of officers and agents from jury and military duty not protected.**—Section 35 of the railway charter provides that "the president, directors, clerks, agents, officers, and servants of said company shall be exempt from military duty except in cases of invasion or insurrection, and shall also be exempt from serving on juries and working on public roads." This section was not in the nature of a contract, but a mere personal privilege, and hence was declared class legislation in Tennessee and unconstitutional. 4 *Lea*, 316. It was at first held good in Alabama, 41 *Am. & Eng. R. R. Cases*, 275, but subsequently overruled in 91 *Ala.*, 70; 53 *Am. & Eng. R. R. Cases*, 37. See also *Thomp. on Corp.*, sec. 5338.

**Exemption from legislative control as to freight charges, not protected.**—Section 14 of the railway charter provides that "the company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, and

produce over the said railroad by them to be constructed; *Provided*, That the charge of transportation or conveyance shall not exceed thirty-five cents per one hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement for every hundred miles, and five cents a mile for every passenger; *And provided also*, That the said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned." Charter, sec. 14, p. 9 herein. If this section gives any vested right, or amounts to a surrender on the part of the state of its power to regulate its tolls and charges for its services to be rendered to the public, then it falls within the constitutional protection above explained, and the railway could always charge such tolls and rates as to it might seem reasonable, notwithstanding the creation of a subsequent State Railroad Commission. 134 U. S., 418 [33, 970]; 16 Am. & Eng. R. R. Cases, 1; 61 Mo., 24.

A careful analysis of the section, however, fails to show any surrender of the legislative power to regulate freight charges. It simply guaranteed to the company the right to charge for freight and passengers. It did not guarantee or authorize any particular rates, but simply prohibited it from charging more than the rates therein set out.

In conformity with this theory our supreme court, in construing this section, has held that "its intent was not to proportion the charges by any unit of distance, but to fix a maximum beyond which the company could not go, and to leave the tariff of charges, within that limit, to the company, subject to the rule of the common law that charges should be reasonable, and to the regulating power of the courts and of the legislature. 9 Lea (Tenn.), 609. Hence, this section would not protect the railway from the control of any legally constituted state railroad commission.

**May charge branch roads, however, on basis of twenty miles, whether that long or not.**—Section 40 of the railway charter provides, among other things, that branches may be built to connect with the Nashville & Chattanooga Railroad



Company, but that "the company shall not be required to receive any car from such branches without receiving payment for at least twenty miles transportation. Charter, sec. 40, p. 23, herein.

**Chancery court amendments to charters.**—All chancery court amendments, under the acts of 1870–71, ch. 54, save as to change of name, are useless where they are not absolutely void. The chancery court only had authority to organize corporations for the purpose and with the franchises granted by a general law, or to amend its charter to that extent, and no more. 12 Lea, 97, 102; 3 Bax., 98; 1 Tenn. Ch., 83.

Amendments, therefore, that came within the purposes provided for by a general law would be valid to the extent of the provisions of that law, and only those would be void which attempted to confer powers and privileges beyond the provisions of the statute. Same. See, also, 8 Bax., 332; 1 Tenn. Ch., 95, 98; 11 Lea, 3; 9 Lea, 380; 1 Lea, 462.

This being so, such amendments would be void unless such powers and privileges were already granted by the general law. If they were already granted by the general law, it needed no chancery court decree to vest the corporation with the power. Such amendments, therefore, when they were not void, were useless. Their only virtue, if any there be, might be to show an acceptance on the part of the corporation of particular powers and privileges which had been granted by the general law, but such acceptance, however, might be better shown in other ways—as, for instance, by the production of the minute books, etc. If a corporation, however, was properly organized (chartered) by a chancery court, its charter could be amended under the acts of Tenn., 1889, p. 303, and 1893, ch. 146. But see 9 and 10 Pickle.

All the chancery court amendments, though of no particular value, are set out herein, on pp. 50–55.

**Forfeiture of charter.**—To justify a forfeiture of the charter for misuser or nonuser, there must be something wrong arising from wilful abuse, or wilful neglect; something more than accidental negligence or mistake as to power granted, or as to the

mode of exercising an acknowledged power. 8 Hum. (Tenn.), 235; 2 Sneed (Tenn.), 254.

Where such mistakes have occurred, and there has been no wilful abuse or neglect, chancery will be confined to the injunction power to prevent abuse. 8 Hum. (Tenn.), 235.

An acting corporation will be presumed to be legally incorporated until the contrary is shown, and no such franchise shall be declared null, or forfeited, except in a regular proceeding for that purpose. Code Tenn. § 1484; 15 Lea, 104.

The state only, which granted the franchise, can institute proceedings of forfeiture. 15 Lea, 104; 3 Tenn. Ch., 164; 3 Lea, 334, 2 Swan, 333; 12 Heis., 497; 12 Pickle, 253-92. Bill must be filed, if for purposes embraced in § 3409 of code, in name of state and with the sanction of the attorney-general. 3 Lea, 333; 8 Lea, 74; 15 Lea, 110; 3 Tenn. Ch., 164. See, also, §§ 3412 and 3413 of Code Tenn., as construed in 8 Lea, 75.

An ordinary business corporation, in the absence of statute to the contrary, where its charter specifies no definite time for its continuance, may sell its property and wind up its affairs whenever a majority of its stockholders may deem it advisable. 7 Gray, 393; 22 N. J. Eq., 416; *Purker v. Bethel Hotel Co.*, vol. 34, No. 2, S. W. Rep., p. 214; 12 Pickle (Tenn.), 253; 3 Mo. App., 159, 169; 71 Ala, 581; 30 Pa. St., 42; Morawetz on Priv. Corp., sec. 413; Cook on Stock and Stockholders, sec. 629.

The dissolution of a pecuniary or business corporation is effected in one of the following ways, viz.:

1. By the expiration of its charter.

The Nashville, Chattanooga & St. Louis Railway charter, however, has no time limit, and, therefore, the corporation can never be dissolved in this manner.

2. By act of the legislature, where the power is reserved in the act of incorporating for that purpose.

As no such power was reserved in the act incorporating this railway, as before pointed out, it can never be thus dissolved.

3. By surrender of its charter, which is accepted.

This corporation may be dissolved under this section, should it like. 1 Swan (Tenn.), 165; 80 N. Y., 599; 63 Pa. St., 428; 7 Cold. (Tenn.), 420; Cook on Stock and Stockholders, sec. 629.

4. By willful violation of its franchises and judgment of dissolution pronounced by a court having jurisdiction, for cause.

But this can only be done by proceedings instituted by the state, with sanction of attorney-general.

2 Mor. Pri. Corp., sec. 1004; Taylor Pri. Corp., sec. 430; 15 Lea, 104, 110; 40 N. J. Eq., 427; 87 Mo., 95; 3 Lea, 333; 8 Lea, 74; code (M. & V.), §§ 3412, 3413; *Parker v. Bethel Hotel Co.*, vol. 34, No. 2, S.W. Rep., p. 209; 12 Pick., 253-292. See also 10 Pick., 124.

See also "Dissolution," herein.

### **Abandonment of right of way, as ground for forfeiture.—**

Under the general laws of the State of Tennessee, there is nothing to prevent a railway company from abandoning its entire right of way, though such action would work a forfeiture of its charter. A failure to build the entire line of road, as authorized by its charter, however, is not a ground of forfeiture in this state. It is probable, however, that it cannot permanently abandon a part which has actually been constructed and in operation without such result. 24 N. Y., 161; 82 Am. Dec., 205; 17 Am. L. Reg. (N. S.), 266; 113 U. S., 424; Elliott on R. R., sec. 638; 2 Barn. & Ald., 646; 36 Wis., 467; 20 N. W. Rep., 696; 24 S. E. Rep., 154; 4 Dil., 479; 29 Conn., 538; 142 U. S., 492. But see 12 Gray, 180; 1 Shannon (Tenn.), 511; 120 Ill., 48; Rorer on R. R., 572.

Under the acts of Tenn. 1887, ch. 39, a railroad company may change either terminus before the final location of the road. This would assist in many cases, or it may sell that part desired to be abandoned.

As to right of railway company, in event of permanent or temporary abandonment, to remove rails, bridges, etc., see "Right of Way," "Eminent Domain," herein. Refer to index.

It is a well-established principle of law, however, that in order to constitute an abandonment of a right of way, there must not only be a non-user, but an intention on the part of the



railway company to abandon it. 140 Ill., 435; i. c. 30 N. E. Rep., 686; 29 Iowa, 276; 37 Ind., 294.

What constitutes a technical abandonment must, therefore, depend upon the particular circumstances of each case. No general rule of law applicable to all cases can be laid down as to what change of a station or route will constitute an abandonment or location. 137 Mass., 48; 57 Iowa, 249.

In the case of *Henderson v. Central Pass. R. R. Co.*, reported in 21 Fed. Rep., 358, it was held that the right of way acquired by a railroad company may be lost by abandonment, and a nonuser for more than ten years was held to be sufficient evidence of the same, and that an abandonment is to be more readily presumed where the easement is granted for a public benefit than where it is held for private use. 21 Fed. Rep., 358.

It has been held, however, that the mere sale and transfer of the right of way to another company before the road is built does not constitute an abandonment. 30 Minn., 541; 14 Am. & Eng. R. R. Cases, 47; 2 Iowa, 288; 7 Ohio St. Rep., 1; 18 Ohio St. Rep., 93; 51 Am. & Eng. R. R. Cases, 436; 5 Cush., 509; 52 Pa. St. Rep., 506.

So it has been held that the failure to pay for the right of way was not in the nature of a forfeiture. 36 Conn., 196.

It is laid down as a general principle by Elliott on Railroads, sec. 931, that "In the absence of any express legislative enactment on the subject, perhaps no court would be justified in fixing the limit at which a failure to construct its road should be held to be an abandonment of its location on the part of the company, but the case should generally be controlled by the rules as to the loss of rights by prescription." Citing 159 Pa. St. Rep., 331; 57 Am. & Eng. R. R. Cas., 46; 104 Pa. St. Rep., 399.

Accordingly, he states, it is held that a failure on the part of the company to construct its road for a number of years is not of itself sufficient to show an abandonment of its right of way. Citing 29 Iowa, 276; 140 Ill., 435; 30 N. E. Rep., 686; 159 Pa. St. Rep., 331; 57 Am. & Eng. Ry. Cas., 46;

108 Mo., 50; 51 Am. & Eng. Ry. Cas., 426; 104 Pa. St. Rep., 399; 129 Mo., 62; Elliott on Railroads, sec. 931.

All the authorities unite in holding that as long as there is an intention to complete the work there could be no abandonment, in the absence of any clause in the charter or statutes providing a specified time in which the completion must be effected. This being so, the mere removal of the rails from the right of way would not operate as an abandonment. Of course the removal of the rails, bridges, etc., from the right of way would be one of the facts tending to establish an abandonment, but would not of itself be sufficient. Especially would this be so if the intention of the railway company was not to abandon it. 140 Ill., 435; i. c. 30 N. E. Rep., 686; 29 Iowa, 276; 37 Ind., 294; 137 Mass., 48; 57 Iowa, 249.

See 96 Ga., 385, where change of main line so as to sidetrack a town was not allowed.

**Abandonment of depots and stations; right of company to in certain cases.**—See “Stations” herein. Refer to index.

## CHAPTER LVII.

### CONNECTIONS—WITH AND BY OTHER ROADS.

[See, also, Crossings.]

**Connections; with and by other roads, branches, etc.**—[In Tennessee.] All the railroads of the state have power to construct their roads so as to cross each other, if necessary, by the main trunks or branches, or to unite with each other as with branches. Code Tenn. (M. & V.), § 1249*a*; Shannon's code, § 1504.

By section 40 of the charter of the Nashville, Chattanooga & St. Louis Railway, power is given any individual or individuals, company or body corporate, with permission of the legislature of the State of Tennessee, to construct branches to unite with

the Nashville & Chattanooga Railroad. The section also sets out the terms and conditions upon which it may be done. See p. 23, herein.

**Condemnation for.**—Section 1249*a* of the code of Tennessee (M. & V.; Shannon's, § 1504), above set out, is a general amendment to railroad charter, and empowers a railroad, whose charter authorizes it to condemn land for a right of way, to do so for the purposes of this section, and it has the rights, and is liable only as in other condemnation cases, under § 1549 *et seq.* of the code (M. & V.; Shannon's code Tenn., §§ 1844–1878); 14 Lea, 65.

[In Alabama.] “Railroads may be constructed so as to cross or connect with each other, by the main or branch tracks.” Code Ala., 1896, § 3466.

Railroad corporations have authority to cross or intersect any railroad or street railway, and if such crossing or intersection cannot be made by contract or agreement with the corporation controlling the railroad to be crossed, or with which an intersection is to be made, either party may proceed, in accordance with the provisions of art. 1, ch. 42, of this code, and all other laws relating to the condemnation of lands for public use, the provisions of which are hereby made applicable, to have an assessment and ascertainment of the damages which may accrue to such corporation or person by reason of such crossing or intersection. Code Ala., 1896, § 1165.

**Other roads have right to connect with this.**—By acts Ala., 1849–50, No. 123, granting the Nashville, Chattanooga & St. Louis Railway a right of way, it was specially provided that all railways now or hereafter to be chartered in Alabama should have the right to connect with it. See act itself, on p. 55, herein.

[In Georgia.] Under § 2167, subsec. 6, of the code of Ga., 1895, all railroad companies of Georgia are given power to “cross, intersect, or join or unite its railroads with any railroad heretofore or hereafter to be constructed, at any point in its route, or upon the ground of any other railroad company, with the necessary turnouts, sidings, and switches, and other conveniences necessary in the construction of said road, and may run over any part of any railroad's right of way necessary



or proper to reach its freight depot, in any city, town, or village through or near which said railroad may run, under the limitations hereinafter named; but in crossing another railroad, either over, under, at grade, level, or otherwise, it shall be at the expense of the company making the crossing, and in such way and manner, at the time of construction, as not to interfere with said railroad in its regular travel or business." Code Ga., 1895, § 2167, subsec. 6.

Again, by section 2213 of the same code it is provided that "where any railroad in this state joins another at any point along its line, or where two of such roads have the same terminus, either line, having the same gauge, may, at its own expense, join its track by proper and safe switches with the other, should such other road or company refuse to join in the work and expense." Code Ga., 1895, § 2213.

This section does not confer authority on railroads to run through incorporated cities to join another railroad. 74 Ga., 659.

Again, by section 2215 of same code it is provided that "should any railroad company refuse to allow the connecting switches put in its line when requested under section 2213, it shall and may be lawful for the other road seeking such connection to proceed to procure right to use so much of the franchise of the former as may be necessary for such purpose, in the manner pointed out in the charter of the Central Railroad & Banking Company for ascertaining the value of and paying for private property taken for use of said road." Code Ga., 1895, § 2215.

See p. 61 herein for rights, privileges, etc., granted Nashville, Chattanooga & St. Louis Railway by state of Georgia.

[In Kentucky.] See 82 Ky., 541; 95 Ky., 550. By § 768, sub. sec. 5 of code of Ky., 1894, all railroads of Kentucky are given power to cross any railroad in the state on terms therein set out. By § 769 of same code they are allowed to build switches, spur tracks, or branches, as may be necessary to conduct its business or develop business along its line of road. The power to make connections may possibly exist under this section.

## CHAPTER LVIII.

*CONSOLIDATION—TERMS AND CONDITIONS.*

**Power to consolidate with other roads ; terms and conditions.**—[In Tennessee.] There is no provision in the charter of the company upon this subject, but under the general law of the State of Tennessee, every railway corporation existing under a general or a special law, or under a general or a special law of any other state, ratified by this state, and having authority to operate and maintain a railroad in this state, shall have power to consolidate itself with any other railroad corporation whose road shall connect with or intersect the road of such existing railroad corporation or any branch thereof. Code Tenn. (M. & V.), § 1263; Acts Tenn. 1871, ch. 69; Acts Tenn. 1877, ch. 72 (Shannon's Code, § 1522). See 4 Pickle (Tenn.), 140.

**Agreement to be in writing.**—The agreement of consolidation shall be in writing, and shall set forth the corporate name agreed upon, and the terms and conditions of the consolidation. Code Tenn. (M. & V.), § 1264; Acts Tenn. 1871, ch. 69; Acts Tenn. 1877, ch. 72 (Shannon's Code, § 1523).

**Approval of stockholders.**—The consolidation shall not have effect until the terms and conditions of the agreement shall have been approved by a majority of the stockholders of each of the consolidating companies at a regular annual meeting. Code Tenn. (M. & V.), § 1265; Acts Tenn. 1871, ch. 69; Acts Tenn. 1877, ch. 72; Acts Tenn. 1867-68, ch. 72 [Shannon's Code, § 1524].

**Must first pay debt due state.**—Before the consolidation shall take effect the companies must first pay off all indebtedness due the state for bonds issued to aid in the construction of the road. Acts Tenn. 1871, ch. 69, sec. 2; Acts Tenn. 1877, ch. 72, sec. 2.

**Agreement to be recorded, where.**—The agreement, together with the evidence of the stockholders' approval, shall be filed

and recorded in the office of the secretary of state. Code Tenn. (M. & V.), § 1266; Acts Tenn. 1871, ch. 69; Acts Tenn. 1877, ch. 72, § 2.

**Rights of creditors.**—The rights of creditors of the consolidating companies shall in no wise be affected or impaired by such consolidation. Code Tenn. (M. & V.), § 1267 [Shannon's Code, § 1526].

**Powers of old companies go to new.**—The corporation so formed shall have all the rights, powers, privileges, immunities and franchises, and be subject to all the duties and obligations, not inconsistent with the provisions of this article, conferred and imposed by the laws of this state upon such companies so consolidating, or either of them. Code Tenn. (M. & V.), § 1268; (Acts Tenn. 1877, ch. 72, § 3) [Shannon's Code, § 1527].

**Powers; what they are.**—The new company shall have power:

1. To fix the number of its directors and the time of their election.
2. To fix the number, names and duties of its officers.
3. To pass by-laws for the government of the company and the management of its affairs.
4. To fix the amount of its capital stock, which shall be divided into shares of \$100 each.
5. To issue bonds and dispose of same in such form and denomination and bearing such interest as the board of directors may determine, and to secure the payment thereof by mortgage of every and all the property and franchises of said consolidated company, and of the companies from which it was formed.

6. And to do all other acts and things which the said companies so consolidating, or either of them, might have done previously to such consolidation. Code (M. & V.), § 1269; (acts, 1877, ch. 72, sec. 3) [Shannon's code, § 1528].

The acts of 1881, conferring the power to make mortgages upon all railway companies, in very broad terms, does not repeal the special limitations imposed by the acts of 1877, ch. 72, upon the power of consolidated railway companies to make mortgages of their property. 4 Pick. 140.



**Exemption from taxation not transferred.**—No exemptions from taxation of railroad property and franchises and capital stock therein, contained in railway charters or other railway laws of this state, shall be transferred to, or conferred upon, such consolidated company, or the property and franchises and capital stock therein of such consolidation of railroads, or of the property appertaining thereto and used in the operation thereof. Code Tenn. (M. & V.), § 1270 (acts Tenn., 1877, ch. 72, sec. 3).

The act of 1877, ch. 72, is constitutional. 4 Pick. 141.

**Consolidation of railways chartered under general laws.**—It shall be lawful for any railroad corporation existing in this state under a general law, that now has under construction, or proposes to construct and operate and maintain, a railroad for the transportation of persons and freight, to consolidate itself with any other railroad corporation that has under construction, or proposes to construct and operate and maintain, another railroad for the transportation of persons and freights. Acts Tenn. 1887, ch. 188, sec. 1 [Shannon's code Tenn., § 1532].

**Majority of stockholders must approve.**—The consolidation herein provided for shall not have effect until the terms and conditions of the agreement shall have been approved by a majority of the stockholders of each of the consolidating companies at a regular annual meeting, or at a called meeting called for that purpose. Same, sec. 2 [Shannon's code Tenn., § 1533].

**Roads must not compete or be parallel.**—The terms and provisions of this act shall not apply to corporations whose proposed railroad line or lines now being constructed shall run parallel to each other, or in any wise compete with each other for the transportation of persons and freights from or to the same points; it being the intention to apply the terms and provisions of this act, and extend the privileges herein granted, to such corporations as now have, or may hereafter have, under construction, or propose to construct, such railroad lines as, when consolidated, they will form one continuous line, or one will be but an extension of another or others. Same, sec.

3 [Shannon's code Tenn., §§ 1490, 1534]. See also acts Tenn. 1895, ch. 152, sec. 1.

**What roads may consolidate; conditions.**—The provisions of this act shall apply to railroads under construction, or proposed to be constructed, which, when completed, are to be connected and form one continuous line in this or other states; *Provided*, That the part of the road so consolidated lying in this state shall be subject to the jurisdiction of the state in its legislative and judicial departments to the same extent as if no such consolidation had been made. Acts Tenn. 1887, ch. 188, sec. 4 [Shannon's code Tenn., § 1535].

[In Alabama.] By acts Ala., 1891, p. 970, it is provided that "whenever the lines of any two or more railroads, or contemplated railroads, chartered under the laws of this or any other state, which, when completed, may admit the passage of burden or passenger cars over any two or more of such roads continuously without break or interruption, such companies are authorized, before or after completion, to consolidate themselves into a single corporation in the manner therein set out." Code Ala., 1896, §§ 1166, 1167, 1168, 1163, sub. sec. 11.

(1) As the method of consolidation, terms, etc., provided therein are quite lengthy, and as it is not probable that the Nashville, Chattanooga & St. Louis Railway will ever avail itself thereof, the same is here omitted, with simply a reference thereto.

(2) See p. 55 herein for franchises, etc., granted by Alabama to Nashville, Chattanooga & St. Louis Railway.

[In Georgia.] By acts Ga., 1892, p. 51, it is provided that "any railroad company incorporated under the provisions of this article shall have authority to sell, lease, assign or transfer its stock, property, and franchises to, or to consolidate the same with, those of any other railroad company incorporated under the laws of this or any other state, or of the United States, whose railroad within or without this state shall connect with or form a continuous line with the railroad of the company incorporated under this law, upon such terms as may be agreed upon; and, conversely, any such corporation organized under the provisions of this article may purchase, lease, consolidate with, absorb and merge into itself the stock, property, and

franchises of any other railroad company incorporated under the laws of this or any other state, or the United States, whose railroad within or without this state shall connect with or form a continuous line or system with the railroad of such company incorporated under this law, upon such terms as may be agreed upon," etc. Code Ga., 1895, § 2179.

(1) See secs. 2173 and 2177 of the same code on the same subject.

(2) See p. 61 herein for franchises, etc., granted by state of Georgia to Nashville, Chattanooga & St. Louis Railway.

[In Kentucky.] By the Kentucky law it is provided that "any two or more companies may, unless otherwise provided by law, consolidate into a single company, in the manner provided in article 1 of this chapter, and such new corporation shall possess all the powers, rights, and franchises conferred upon such two or more corporations, and shall be subject to all the restrictions and liabilities and perform all the duties imposed by the provisions of their respective charters or laws of organization not inconsistent with this law. Code Ky., 1894, § 770.

1. Under sec. 201 of the constitution of Kentucky, consolidations of parallel or competing lines are prohibited. Code Ky., 1894, p. 139.

2. Under sec. 200 of the constitution of Kentucky, the consolidation of a domestic with a foreign corporation does not make such corporation a foreign one. Code Ky., 1894, p. 139.

3. For method of consolidation of railways, see code Ky., 1894, §§ 555, 556, *et seq.*

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## CHAPTER LIX.

### CONTRACTS—WHAT MAY BE MADE—HOW CORPORATE NAME SIGNED TO, ETC.

**Charter provisions on subject of contracts.**—Under section 1 of the charter, the railway is given power to make contracts and do all lawful acts properly incident to a corporation, and necessary and proper to the transaction of the business for which it is incorporated. See p. 1, herein.

**Same. Contracts not to exceed what.**—It is provided by



section 12 of the charter of the Nashville, Chattanooga & St. Louis Railway, p. 8, herein, "that the board of directors shall not exceed in their contracts the amount of the capital of the corporation, and of the funds which the company may have borrowed and placed at the disposal of the board, and, in case they should do so, that the president and directors who may be present at the meeting at which such contract or contracts so exceeding the amount aforesaid shall be made, shall be jointly and severally liable for the excess, both to the contractor or contractors and the corporation; *Provided*, That anyone may discharge himself from such liability by voting against such contract or contracts, and causing such vote to be recorded on the minutes of the board, and giving notice thereof to the next general meeting of the stockholders."

Directors are not mere figureheads; they must use good faith, care, attention, and circumspection, or they will be liable. They are individually liable, however, only for such specific debts as were contracted with their assent, in excess of the paid-up capital, and remain unpaid after the corporate assets are exhausted. 3 Pick. (Tenn.), 60. See, also, 6 Bax., 278; 11 Pick., 635.

**Same. Contracts binding without seal.**—By section 11 of the same charter all contracts and agreements authenticated by the president of the board shall be binding on the company without seal, or such other mode of authentication may be used as the company by their by-laws may adopt.

Deeds to land, however, must have seal attached. 10 Pickle (Tenn.), 460.

**Contracts void if beyond scope of powers.**—Contracts of a corporation beyond the scope of the powers enumerated in its charter, or conferred by statute, and other powers not fairly incidental thereto, are unlawful and wholly void, and cannot be ratified by either party; and no performance on either side can give it validity or be the foundation of any right of action upon it. 139 U. S., 24 [35, 55].

**Deeds; contracts; how corporate name signed to.**—The proper way in all cases to sign the corporate name is, "Nash-

ville, Chattanooga & St. Louis Railway," per———president; attest———secretary, and then have the seal attached, and acknowledgments made. For form of acknowledgment see p. 628 herein.

The seal is not essential in all contracts or agreements, but in cases of mortgages, deeds to real estate, etc., it should always be affixed to make it legal. 10 Pickle (Tenn.), 460; *Parker v. Bethel Hotel*, 12 Pickle (Tenn.), 253.

A deed purporting to be executed by a corporation to a trustee, which bears the signature and seal of the president, with the suffix, "President of D. R. Co.," is not the deed of the corporation, but the personal act of the president. 97 N. C., 300; 88 Ky., 272.

Again, it has been held that "when the conveyance describes the grantors as a corporation, but is executed by the president, under his own name and seal, it is not the deed of the corporation." 23 Am. Dec., 746, note; 3 Wash. Real Prop., 294, § 573, 574.

The deed of a private corporation is ineffectual at common law to pass the legal title to real estate which recites no authority for its execution, and is signed by an individual describing himself as president of the corporation, without affixing the corporate seal, and which purports to have been acknowledged by him personally, and not by the corporation through him. 10 Pickle (Tenn.), 459; vol. 34, No. 2, S. W. Rep., p. 209.

The conveyance of its real estate is one of the most solemn acts of a corporation, and it can only be done in pursuance of a vote of the corporation, and by deed executed in the form and mode prescribed by law. Thomp. on Corp., sec. 5096; 94 Tenn., 460; 29 S. W. Rep., 726; *Parker et al. v. Bethel Hotel Co.*, vol. 34, No. 2, S. W. Rep., 209; 12 Pick. (Tenn.), 253.

The corporation, however, may, by proper resolution, empower some particular officer to act as its agent in such matters.

**May contract with other railways for use, enjoyment, and operation of their property and franchises, or any part thereof.**—For conditions and terms, see acts Tenn. 1887, ch. 198, sec. 1, as set out herein under general heading, "Lease."

**Acknowledgments.**—It was held by the supreme court of the United States that “there was no statutory provision in Tennessee, at that time, as to the execution or acknowledgment of deeds by corporations. In such cases the officer affixing the seal is the party executing the deed, within the meaning of the statutes requiring deeds to be acknowledged by the grantor.” 95 U. S., 710; 24:544.

Since the above decision, however, the legislature has passed an act (1899, p. 364) providing a form of acknowledgment. The form is set out in full herein on page 628.

**Railways may contract for lease and conditional sale of rolling stock, equipments, etc.**—Acts Tenn. 1885, ch. 96. See also “Sales,” herein.

## CHAPTER LX.

### *CORPORATE NAME—HOW CHANGED AND TO BE CHANGED.*

**Corporate name; how changed.**—The original name of the corporation was “The Nashville & Chattanooga Railroad Company,” but was subsequently changed to the “Nashville, Chattanooga & St. Louis Railway,” May 30, 1873, by a decree of the chancery court at Nashville, Tenn., under the acts of Tenn. 1870-1, ch. 54, p. 63, as per minute book “X,” pp. 222-4 in said court.

This was clearly within the power of the chancery court at that time under said act. 1 Tenn. Ch. Rep., 83, 95, 97; 3 Bax., 98. See also 12 Lea, 97, 103; 11 Lea, 3; 9 Lea, 380; 1 Lea, 462.

**How change can be made now.**—Section 34 of the charter provides that “this charter shall be amendable from time to time by the legislature whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments; and when such amendments shall be adopted by the legislature and submitted



to the directory, and be accepted and adopted unanimously by the president and directors, they shall be obligatory on the stockholders, and not otherwise." See p. 21 herein. It is doubtful whether this method can be followed now under the new state constitution of 1870. An amendment, however, accepted and adopted by the president and directors unanimously, will be valid, although not recommended by the unanimous petition of the president and directors, that being merely directory. 8 Bax. (Tenn.), 108; see also case of *Rogers v. Nashville, Chattanooga & St. Louis Railway*, decided by Judge Lurton at Cincinnati, but not yet reported.

The above section of the charter is the only law bearing upon the subject, as the legislature of the state of Tennessee has repealed the acts of 1870-71, ch. 54, above referred to, and failed to pass another in lieu thereof authorizing corporations chartered by special act, as was the Nashville, Chattanooga & St. Louis Railway, to change their names. If it cannot be done, therefore, under the above section of the charter, which is extremely doubtful, it cannot be done at all.

**Corporations chartered under general acts 1875 may change name.**—See acts Tenn., 1897, p. 271, which superseded the acts of 1893, ch. 146, which latter act was doubtless unconstitutional.

**Who to sign corporate name and how.**—[See "Contracts" herein, on p. 706.]

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## CHAPTER LXI.

**CROSSINGS—POWER TO CROSS RAILROADS, HIGHWAYS, WATER COURSES; CONDITIONS—GATES, STOCK GAPS, ETC.—  
RIGHT OF CITIES AND COUNTIES TO BUILD  
STREETS, ROADS AND ALLEYS  
ACROSS RAILROAD.**

[See also "Bridges," "Connections."]

**Power granted Nashville, Chattanooga & St. Louis Railway to cross roads, water courses, etc.**—[In Tennessee.] Section

22 of the charter of the Nashville, Chattanooga & St. Louis Railway (p. 13 herein) provides that: "The said company shall have the right, when necessary, to construct the road, or any branch thereof, across or along any public road or water course; *Provided*, That the said road and the navigation of such water course shall not be thereby obstructed; *And provided further*, That such railroad shall not be located so near any turnpike road as to injure or prejudice the interests of the stockholders in such turnpike road, except upon such terms as may be agreed upon by the president and directors of the same on behalf of the stockholders." Charter, sec. 22, p. 13 herein.

**Bridges over water courses.**—See chapter on "Bridges" herein, p. 642.

**How private and public crossings to be made.**—Again, by section 32 of the charter, it is provided that: "Whenever, in the construction of said road, it shall be necessary to cross or intersect any established road or way, it shall be the duty of the company to construct said road across such established road or way so as not to impede the passage or transportation of persons or property along the same, or, where it shall be necessary to pass through the land of any individual, it shall be their duty to provide for such individual a proper wagon way or ways across said road from one part of his land to the other." Charter, sec. 32, p. 21 herein.

Where a railroad crosses a public road already in use it must, unless relieved by statute, not only restore the public road, but erect and maintain perpetually all structures and keep up all repairs made necessary by such crossing, for the safety and convenience of the public. 3 Pickle (Tenn.), 712. See, also, 3 Head, 522, and 14 Lea, 525, which holds this section valid in action by turnpike company to enforce contract. But see 16 Lea, 300; 88 Ky., 659.

The term "public road" in the above sections of the char-

ter does not embrace the streets and alleys of a city. 3 Head, 596.

The temporary and necessary obstruction of navigation in the construction of a bridge is not unlawful under these sections, nor within the prohibition of § 1527 of the Code (Tenn.), (M. & V.). 6 Pickle, 638. But see 5 Sneed, 427.

A railroad may be indicted and fined for obstructing a public highway contrary to powers in their charter. 3 Head, 523. See Mills on Em. Dom., sec. 44a, for discussion of crossings.

**Power of other railroads to cross the Nashville, Chattanooga & St. Louis Railway, and vice versa.**—All the railroads of the state of Tennessee have power to construct their roads so as to cross each other, if necessary, by their main trunks or branches, or to unite with each other as with branches. Code Tenn. (M. & V.), § 1249a [Shannon's Code Tenn., § 1504].

For method of condemning crossing, see "Eminent Domain" herein. Refer to index. See, also, 14 Lea (Tenn.), 65.

**Railroads must erect and maintain crossings at public highways.**—All persons, companies, corporations or syndicates owning or operating a railroad, or railroads, in the state of Tennessee are required to make and furnish good and sufficient crossings on the public highways crossed by them, and keep same in lawful repair at their own expense. Acts Tenn., 1889, p. 222, ch. 119, sec. 1. [See additional act below.]

This section seems simply to declare what was previously the common law. It does not require that the railroad should erect and keep in repair crossings that were made necessary by public highways built subsequent to the erection of the railroad, but simply requires the railway to erect and keep in repair all crossings on the public highways crossed by them. In other words, the highway must have been built before the railroad to hold it liable. Mills on Em. Dom., sec. 43; 24 N. J. L., 62; 76 Ill., 447. This law has been amended however. See below.

**Punishment for failure.**—A failure to observe and fully comply with the provisions of the above section shall subject



the offender to a fine of not less than ten nor more than one hundred dollars, and the grand juries of the state shall have inquisitorial powers to investigate any violations of the above sections; *Provided*, This act shall not apply to crossings within the corporate limits of towns or cities. Same, sec. 2.

**Must grade and keep in repair crossings, how.**—By acts 1899, p. 840, it is provided that “every company or corporation or person operating a line of railroad within the state of Tennessee shall be required to grade to a level with the rails of said railroad and to keep in repair every public road crossing such railroad for a distance of ten (10) feet on each side of such railroad track and between the rails thereof; *Provided*, That the provisions of this act shall not apply within the limits of any city, taxing district, or incorporated town. Acts, 1899, ch. 356, p. 840, sec. 1.

**Penalty for failure.**—That the failure of any such company or corporation or person to comply with the requirements of section 1 of this act shall be deemed to be a misdemeanor and punishable as such. Same, sec. 2.

**As to enlarging bridges or crossings considered.**—Whether the railway is bound to enlarge and extend a bridge or crossing it was compelled to originally make, if by increase of population and public travel it becomes inadequate—question reserved. 3 Pick. (Tenn.), 720. But see 16 Lea (Tenn.), 300.

**Where railroad fails to erect or keep in repair.**—Where a railroad fails or refuses to perform its duty as to erecting and keeping in repair crossings where it is its duty to do so, the county can have the work done and recover the reasonable cost thereof. 3 Pick. (Tenn.), 712.

**Does not apply at turnpike crossings.**—A turnpike which crosses the railway, however, must keep in repair crossing. 3 Bax. (Tenn.), 364.

**Private crossings.**—"Where it shall be necessary to pass through the land of any individual, it shall be the duty of the road to provide for such individual a proper wagon way, or ways, across said road from one part of his land to the other." Charter, sec. 32, p. 21 herein.

Under this section, as no election is given the land owner, it is the right of the railway to determine where the crossing shall be located. 51 N. Y., 568; 4 Am. Ry. Rep., 259; 14 Am. Ry. Rep., 484; Rorer on Railroads, p. 494.

In the exercise of this right, however, regard must be had to the convenience of both parties, and such a location must be made as will not subject the proprietor to needless and unreasonable injury. Same.

**Gates and fences at private crossings.**—By sec. 1, ch. 83, acts 1879, it is made a misdemeanor for any person to obstruct public highways, private ways, streets, alleys, sidewalks, public grounds, commons, and ways leading to burying places, churches, schoolhouses, etc. Another statute declares it to be an indictable nuisance to obstruct public highways, private ways, etc., to burying grounds. Code Tenn., § 4913, sub sec. 4; (M. & V.) § 5746, sub. sec. 4; (Shannon) § 6869, sub. sec. 4.

The supreme court of Tennessee has decided that a railroad company in all such cases is under no legal obligation to fence such crossing or to put gates or bars across the same, but was positively inhibited from doing so. 17 Pick. (Tenn.), 197. Whether this decision would apply to a private crossing erected by the railroad company for the convenience of a landowner through whose farm the railroad ran, so as to enable him to go from one part of his farm to the other, is doubtful. The question is now before the supreme court in the case of *J. W. Greer vs. Nashville, Chattanooga & St. Louis Railway*, appealed from Davidson county, and will doubtless be decided at its next December term, 1899.

Most of the states hold that railways are required to place gates or bars across private crossings and keep them in repair, and that if the gates are left open or bars thrown down by third persons without the fault of the railway company, it cannot be held liable for accidents therefrom. 43 Ill., 119; 47 Ill., 173; 54 Ia., 540; 29 Ind., 545; Rorer on R. R., 495; 11 Am. & Eng. R. R. Cases, 491; 100 Ind., 301; 23 Am. & Eng. R. R. Cases, 200; 101 Ind., 597; 16 N. Y., 476.

**Stock gaps or cattle guards at private crossings.**—In all cases where the railroad company is not required to erect gates or bars at private crossings, it will be required to put in stock gaps and wing fences, so as to prevent stock from leaving the private crossing and going up or down the railroad. At such private crossings at which it can erect gates, it need not put in stock gaps.

**Stock gaps or cattle guards on unfenced tracks.**—“Each and every railroad company whose unfenced track passes through a field or inclosure is hereby required to place a good and sufficient cattle guard, or stops, at the points of entering such field or inclosure, and keep the same in good repair.” Acts Tenn., 1889, ch. 248; Shannon’s code Tenn., § 1595.

**Applies to fields hereafter opened.**—“In case a field or inclosure through which such unfenced railroad track passes shall be enlarged or extended, or the owner of the land over which such unfenced track passes shall open a field so as to embrace the track of such railroad, such railroad company is hereby required to place good and sufficient cattle guards or stops at the margin of such inclosure or fields and keep the same in repair; *Provided*, Such owner shall give the nearest or most accessible agent of such company thirty days’ notice of such change. *Id.*, § 2; Shannon’s code, § 1596.

**Liable for all damages for failure.**—“Any railroad company neglecting or refusing to comply with the provisions of §§ 1595 and 1596 shall be liable for all damages sustained by anyone by reason of such neglect or refusal; and, in order for the injured party to recover all damages he has sustained,



it shall be only necessary for him to prove such neglect or refusal and the amount of such damages; *Provided*, Such company shall not be liable if it shall be shown that the opening of such field was made capriciously and with intent to annoy and molest such company." *Id.*, § 3; Shannon's code Tenn., § 1597.

**Right of cities and counties to condemn crossings over right of way of railways for streets, roads, alleys, etc.—**

It seems to be well settled that a general statutory power, conferred by a city charter, to take lands for public streets, alleys, etc., will not be presumed to authorize the city to take land already lawfully appropriated for a depot building and appurtenances. 30 Minn., 359; 15 N. W. Rep., 684; 23 Minn., 167; 14 Am. & Eng. Railroad Cases, 34; 91 N. Y., 552; 24 N. Y., 345.

Under such general authority to lay out highways, a part of the right of way of a railroad cannot be taken longitudinally, nor can the way be laid through depot grounds, shops, etc., which are devoted to special uses in connection with the road and necessary to its operation and in constant use in connection therewith. 39 N. J. L., 28; 36 Conn., 255; 30 Minn., 359; 91 N. Y., 552; 53 Ga., 120; Lewis on Em. Dom., p. 352, sec. 266.

It has been held, however, that a slight interference with the platform of a depot would not prevent the establishment of a highway or street. 46 N. J. L., 644.

**Same. General statutes authorize crossings, however.—**

A general authority, however, to lay out highways and streets is sufficient to authorize a lay-out across the right of way of a railway, but not through its depot grounds, etc. 23 Ohio St., 510; 49 Mo., 480; 35 Minn., 141; 24 N. Y., 345; Lewis on Em. Dom., p. 351, sec. 266; Mills on Em. Dom., sec. 46.

This right to make the crossing, however, must be en-

forced in strict compliance with the following statutes of Tennessee:

**To open, change, or close roads.**—All applications to open, change, or close a road shall be made by written petition, signed by the applicant, to the commissioner of the district through which the road runs or is asked to be located, specifying in particular the changes or action asked; or, if the road extends into two or more districts, or is the dividing line between districts, then to the commissioners of said districts. Shannon's code Tenn., § 1620.

**Notice to interested parties; who are.**—No road shall be opened, changed, or closed without giving at least five days' notice to all parties interested of the time said road or roads are to be opened, changed, or closed, and a surveyor or civil engineer may be employed, if necessary to locate the same. Landowners and those controlling land touched by the proposed highway shall be deemed interested parties. Shannon's code Tenn., § 1621.

**Notice when landowners are nonresidents.**—If any owner of the land so concerned is a nonresident, then notice to his agent or attorney, if any such agent or attorney resides in the county, shall be sufficient. If there be no such agent or attorney, then the notice shall be made by publication for four consecutive weeks in the newspaper having the greatest circulation in the county, the last publication to be at least one week before the hearing. Shannon's code, § 1622.

**Jury of view in one district.**—Where the opening, changing, or closing of a public highway only affects one commissioner's district the said commissioner shall associate with himself two other freeholders of said district whom he has never consulted upon the question involved, and who shall be in no way related to the parties affected by such change, closing, or opening of said highway, and who shall take and subscribe to an oath before said commissioner to act without favor or partiality in the matter, whose oaths, thus subscribed, shall become part of the record, upon appeal being taken, and the said

commissioner and two freeholders shall constitute a jury of view. Shannon's code, § 1623.

**Damages, how paid.**—Said jury shall have the power of condemnation and to assess damages, which shall be paid out of the general funds raised for county purposes, upon the order of the commissioner on the county judge or chairman of the county court, who shall issue his warrant therefor, if he approve the same. Shannon's code, § 1624.

**Appeals.**—Any person or persons considering themselves aggrieved by the action of the jury of view may appeal to the next quarterly county court, and from there to the circuit and supreme courts. In case of an appeal the jury of view shall forward all the papers in the case, with their action on the same, to the said quarterly court appealed to. Shannon's code, § 1625.

**Special act as to crossing in Nashville.**—By acts 1857-8, ch. 130, the Nashville, Chattanooga & St. Louis Railway was required to keep a watchman at the crossing at the depot in Nashville, which act is set out herein. See p. 34, and note thereunder.

[In Alabama.] **Alabama grants Nashville, Chattanooga & St. Louis Railway rights of Tennessee charter.**—By acts Ala. 1849-50, No. 123, set out herein on p. 56, and acts Ala. 1888-9, p. 443, set out herein on p. 59, the Nashville, Chattanooga & St. Louis Railway was given rights of Tennessee charter as to certain branches.

**Alabama acts as to crossing other roads.**—All railroads chartered under the general laws of Alabama have authority to cross or intersect any railroad or street railway, and if such crossing or intersection cannot be made by contract or agreement with the corporation, association or person having and controlling the railroad or street railway to be crossed, or with which an intersection is to be made, either party may proceed, in accordance with the provisions of article 1, chapter 42, of this code, and all other laws relating to the condemnation of



lands for public uses, the provisions of which are hereby made applicable, to have an assessment and ascertainment of the damages which may accrue to such corporation or person by reason of such crossing or intersection. The notice required by section 1714 (3209) may be served on any agent of such railroad corporation in the county where the proceedings are instituted. Code Ala., 1896; § 1165.

**Alabama acts as to crossing navigable streams, public roads, etc.**—Railroads chartered under the general laws of Alabama, are authorized, in the construction of their roads, to cross navigable streams or waters, but in the erection and construction of bridges, trestles, or other structures, must not impair the navigation of such streams or waters; and the corporation is also authorized to use, or to cross, or to change public roads, when necessary in the building, construction, or maintenance of its roadway or track, but must place the public road used, or crossed, or changed, in a condition satisfactory to the authorities of the counties having control thereof; but where practicable the track of the railroad must go under or over the public roadway. Code Ala., 1896; § 1164.

1. For Alabama acts authorizing Nashville, Chattanooga & St. Louis Railway to build bridge over Tennessee river, see "Bridges" herein, p. 642-3.

2. **Duty to erect highway bridge over railroad at a safe elevation.** 87 Ala., 708.

3. **The duty to put crossings in order a corporate duty, and proceedings must be against the corporation.** 97 Ala., 105.

**Alabama act authorizing counties and cities to open roads, streets, etc., over railroads.**—There is no special act of Alabama upon this subject, but the authority granted to counties and cities generally to open roads and streets is sufficient to authorize a lay-out across the right of way of a railway, but not through its depot grounds, etc. 23 Ohio St., 510; 49 Mo., 480; 35 Minn., 141; 24 N. Y., 345; Lewis on Em. Dom., p. 351, sec. 266; Mills on Em. Dom., sec. 46.

As counties and cities of Alabama have been granted this authority, such crossings can be made, but the provisions of § 2445 *et seq.* of the code of Alabama, 1896, must be strictly followed.

**Alabama acts as to cattle guards and stock gaps.**—"Every person or corporation operating a railroad must put cattle guards upon such railroad and keep the same in good repair whenever the owner of the land through which the road passes shall make demand upon them or their agents and show that such guards are necessary to prevent the depredation of stock upon his land." Acts Ala. 1886, p. 163; code Ala. 1896, § 3480.

[In Georgia.] **Georgia grants Nashville, Chattanooga & St. Louis Railway certain franchises**, as to its main stem. See p. 61 herein.

**Georgia acts as to railroads crossing each other; terms.**—"Any railroad company, heretofore or hereafter chartered by the legislature of this state, shall have the right to cross any other railroad heretofore or hereafter built or to be built in this state, upon the following terms: They shall be allowed to cross at grade points, or at any other point where the same shall not obstruct the other road, and may be allowed to cross by a tunnel or bridge, if necessary, said tunnel or bridge being made absolutely secure. Code Ga., 1895, § 2219; acts 1870, p. 428.

See also the following sections of the same code: §§ 2167 (5) (6), 2233, 2227, 2243, 2246, 2228, 2231, 2172.

**Georgia acts as to keeping up crossings.**—"All railroad companies shall keep in good order, at their expense, the public roads or private ways established pursuant to law, where crossed by their several roads, and build suitable bridges and make proper excavations or embankments, according to the spirit of the road laws." Code Ga., 1895 § 2220; acts 1838, Cobb, 95.

1 It will be noticed that this section seems to require railways to keep in good order public roads or private ways where crossed by them. In other words, it seems the public roads or private ways must have been constructed before the railroads to hold them liable. If the railroads were built first then the public roads could not be crossed by the railroads, but the railroads crossed by them. Mills on Emi. Dom., § 43; 24 N. J. L., 62; 76 Ill., 447.

2 This duty does not embrace a path or unfrequented way. 72 Ga., 137.

3 Applies to streets. 74 Ga., 774.

4 Railroad not required to build bridges for crossings not public nor private ways, nor responsible for damages on account of bridge narrower than the road at such crossing. 68 Ga., 446.

**Georgia acts as to right of counties and cities to build road and street crossings over railroad.**—There is no specific law authorizing this to be done in Georgia, but the authority granted to counties and cities generally to open roads and streets is sufficient to authorize a lay out across the right of way of a railroad, but not through its depot grounds, etc. Mills on Em. Dom., § 46; Lewis on Em. Dom., p. 351; § 266; 24 N. Y., 345; 23 Ohio St., 510; 49 Mo., 480; 35 Minn., 141.

As counties and cities of Georgia have been granted this authority, such crossings can be made. See § 520 of code Ga., 1895. Also acts Ga. 1897, as set out in acts 1896-7-8, pp. 110, 176.

**Georgia acts as to Western & Atlantic Railroad.**—By § 1022 of the code of Georgia, 1895, it is provided that “all the public road laws and penal laws touching the roads of this state, whether to obligate or protect, apply to the state road (Western & Atlantic Railroad), unless specially excepted, or some other provision is prescribed in lieu of some one or more thereof.”

**Western & Atlantic Railroad.** For franchises, etc., of Western & Atlantic Railroad, see p. 335, et seq. herein.

**Georgia acts as to building and maintaining crossings, cattle guards, etc., at private and public ways.**—Every railroad company shall be required to build and maintain at its own expense good and sufficient cattle guards on each side of every public road or private way established pursuant to law, and on the dividing line of adjoining landowners, where the railroad may cross such public roads, private ways, or dividing lines, when necessary to protect said lands. Thirty days' written notice to build such cattle guards shall be served on any agent or officer of such company by the owner of the lands to be affected by such cattle guards; said notice shall be directed to said railroad company, and contain a description of the point where



such cattle guard is desired, be signed by the said landowner or his agent or attorney, and attested by some officer with a seal; a certified copy of the same being *prima facie* evidence of the contents of the original notice. Code Ga. 1895, § 2243.

(1) Under this section landowner must show necessity for cattle guards before he can recover damages for want of. 104 Ga., 148.

(2) No duty to build save at public roads or private ways legally established. 104 Ga., 602.

**Liability for failure.**—If the railroad company shall fail to build such cattle guards within thirty days, then the railroad company shall be liable to the owner of the land for all damages resulting from the failure so to build; and for each day elapsing after the thirty days have expired, until the said cattle guard is built, in the sum of twenty-five dollars, to be recovered by said landowner in any court having jurisdiction over the same. Code Ga. 1895, § 2244.

**Georgia acts requiring additional cattle guards.**—Whenever the owner of any lands over which any railroad company may have acquired the right of way may desire additional cattle guards other than those provided for in the preceding section, or any farm crossing on his land, it shall be the duty of the railroad company, upon written notice as provided in the preceding section, within ten days after the service of the said notice, to submit to the landowner or his agent, if to be found, a written estimate of the cost of such cattle guard or farm crossing; whereupon the said landowner or his agent, if satisfied with the same, shall pay to the company the sum so estimated, when the company shall at once proceed to build such cattle guards or farm crossings; the cost of the farm crossing to cover only the roadbed of the said railroad. In the event the landowner and the company cannot agree as to the correctness of the said estimate, then the same shall be determined in the same manner as damages for right of way. The award may be had at the instance of the landowner, or his agent, as well as at the instance of the railroad company. In the event the railroad company shall fail to comply with the provisions of this section, or to keep in good repair the guards or crossings, it shall be liable for all damages resulting to such landowner by the

failure to build or keep in good repair such cattle guards or farm crossings, to be recovered in any court having jurisdiction thereof. Code Ga. 1895, § 2245.

(1) See notes to preceding section.

(2) No duty to maintain as to one not owning land. 100 Ga., 600.

**Does not affect existing laws.**—Nothing in the two preceding sections shall be construed in any way to change the liability of railroad companies for damages to live stock, or to prevent landowners from joining their fences to stock gaps, or of free access from and to the said farm crossing. This and the two preceding sections shall not apply to any roads, ways or crossings within the limits of any incorporated town or city. Code Ga. 1895, § 2246.

[In Kentucky.] **Kentucky acts as to railroads crossing each other.**—“Every corporation proceeding to construct its road in or through any county shall file and have recorded, at its expense, in the county clerk’s office of such county a map of the route, showing the center of said proposed road, and the width thereof; and if, after a road is located, it is desired to change its location, or the proposed route is changed, as it may be, a map showing such change, as well as the center and width thereof, shall be filed and recorded, at its expense, in the county clerk’s office of the county in which the change is made. If the proposed route, as indicated by the map, crosses the line of any other railroad, notice of such fact shall, before the construction of the road is commenced near the point of crossing, be given to the railroad commission, who shall give notice to the corporation whose road it is proposed to cross, as well as the other corporation, of the time and place it will meet to consider the question of approving the crossing, if objection be made thereto; and the commission may determine the manner in which the crossing shall be made to protect against accidents thereat. Code Ky. 1894, § 767.

**Kentucky acts giving power to cross highways, water courses, streets, railroads, etc.; terms.**—Railroads of Kentucky have power “to construct their roads upon or across any water course, private or plank road, highway, street, lane

or alley, and cross any railroad or canal; but the corporation shall restore the water course, private or plank road, highway, street, lane, alley, railroad or canal to its former condition, as near as may be, and shall not obstruct the navigation of any stream, or obstruct any public highway or street, by cars or trains, for more than five minutes at any one time; and shall construct suitable road and street crossings for the passage of teams by putting down planks or other suitable material between and on each side of the rails, the top of which shall be at least as high as the top of the rails of such road or street; and, in case the road is constructed upon any public street or alley, the same shall be upon such terms and conditions as shall be agreed upon between the corporation and the authorities of any city in which the same may be, but such road shall not be constructed upon any public street or alley until compensation shall be made by the corporation therefor to the owner of the property adjoining such street or alley, and opposite where such road is to be constructed, either by agreement or in the manner provided by law." Code Ky. 1894, § 687, sub. sec. 5.

**Kentucky acts as to stock gaps; where to be erected.**—"That all corporations and persons owning or controlling and operating railroads as aforesaid shall erect and maintain cattle guards at all terminal points of fences constructed along their lines, except at points where such lines are not required to be fenced on both sides, and at public crossings. But where there is a private passway across said railroad, the landowner for whose benefit it is kept open shall bear one-half of the expense of cattle guards and gates, the former to erect the gates, the corporation or person operating the railroad to erect the cattle guards." Code Ky. 1894, § 1793.

**Kentucky acts authorizing counties and cities to open roads, streets, etc., over railroads.**—There is no special act of Kentucky upon this subject, but the authority granted to counties and cities generally to open roads is sufficient to authorize a layout across the right of way of a railway, but not through its depot grounds, etc. Mills on Emi. Dom., sec. 46; Lewis



on Emi. Dom., sec. 266, p. 351; 23 Ohio St., 510; 49 Mo., 480; 35 Minn., 141; 24 N. Y., 345.

Application for opening roads shall be allowed only for the convenience of traveling to the county courthouse, to a public warehouse, an established town, postoffice, landing, ferry, mill, lead or iron works, the seat of government, salt works, house of public worship, public cemetery, poorhouse, coal or iron banks, to a lock or dam, to an oil well, copper or other mines, a stone quarry, sand bank, to any navigable river, or to a convenient depot on a railroad. Code Ky. 1894, § 4288.

## CHAPTER LXII.

### DEMURRAGE.

[See also "Freight Charges," herein.]

**When demurrage may be charged.**—[In Tennessee.] A railway company has no lien upon goods for demurrage in absence of contract to that effect. A clause providing for same must be put in bill of lading in order for railway to recover. 15 Lea (Tenn.), 261.

For right in Alabama, Georgia, and Kentucky, see "Freight Charges," herein.

## CHAPTER LXIII.

### DIRECTORS—HOW AND WHEN ELECTED—QUALIFICATION— NUMBER—MEETINGS—POWERS—DUTIES, ETC.

**Directors; how elected.**—Section 8 of the charter of the Nashville, Chattanooga & St. Louis Railway provides that the affairs of the company shall be managed by a board of directors, who shall be chosen by the stockholders from their own body. See p. 6 herein. Section 20 of the charter also provides that, in voting for directors, the stockholders shall vote in person or by proxy, according to a prescribed scale therein

set out, but by acts Tenn. 1868-9, ch. 2, p. 83, this section was amended, and the amendment accepted by the company September 20, 1875, so as to provide that thereafter "in all elections held by the company, every stockholder shall be entitled to one vote for each share of stock owned by him." See p. 12 herein. This being so, in the election of directors, as well as in all other elections, each stockholder is now entitled to as many votes as he has shares of stock.

No stockholder is allowed to vote, however, in any general or other election who shall not have held in his own right the shares on which he offers to vote at least three months previous to such election. Charter, § 19, p. 12 herein. A proper construction of the above section would require that the stockholder should hold his stock continuously for the three months preceding the election in order to vote. If the day of annual election should pass, however, without an election of directors, the corporation shall not thereby be dissolved, but it shall be lawful on any other day to hold and make such elections in such manner as may be provided by by-law. Charter, § 9, p. 7 herein.

1. For by-laws on this see following heading:

2. **Vote to be taken; how.**—The by-laws provide that "all elections for officers shall be by ballot, unless by unanimous consent, when the vote may be taken *viva voce*. See p. 647, herein.

**When elected.**—Section 9 of the charter provides among other things that the first meeting of stockholders should be held at Nashville, Tenn., at which time directors should be chosen, and the persons elected directors at this meeting should serve for such period, not exceeding one year, as the stockholders might direct. It further provided that at said meeting the stockholders should fix on the day and place or places where the subsequent election of directors should be held, and that such elections should thenceforth be annually made. See p. 7 herein. Subsequently this section was amended by acts Tenn. 1857-8, ch. 8, so as to allow the stockholders at any meeting to fix the day and place where subsequent elections should be held. See p. 7 herein.

The first board of directors were elected January 24, 1848. Previous to that time the corporation had been managed by the board of commissioners.

The by-laws, passed December 14, 1898, provided that "a general meeting of the stockholders shall take place annually on the first Wednesday after the second Tuesday of September, in the city of Nashville, at which an election for fifteen directors of the company shall be held. Notice shall be given by publication in one or more of the newspapers of the state, as may be ordered by the board of directors." See p. 646, herein.

The by-laws also provide that "should the time fixed for the annual election of directors pass without an election being effected the same may be held on such subsequent day as may be designated by the board of directors or by the stockholders at a general meeting, notice of which election shall be given in the manner aforesaid." See p. 646, herein.

For remedy where president fails to call meeting for election, see "Elections," "Meetings," herein. Refer to index.

The by-laws also provide that "in all cases the directors for the time being, and the officers elected by them, shall continue in office until their successors shall be elected. See p. 646 herein.

**Vacancies in board; how filled.**—By section 10 of the charter the directors are empowered to fill all vacancies which may occur in the board during the period for which they shall have been elected, and in the absence of the president may fill his place by electing a president *pro tempore*. See p. 8 herein.

**By-law on subject.**—The by-laws provide that "any vacancies that may occur in the board from any cause whatever shall be filled by the board by the election of a person to fill such vacancy as provided for in section 10 of the charter." See p. 647, herein.

**President to preside at board meeting. President pro tem., how elected.**—The by-laws also provide that "the president shall preside at meetings of the board, preserve order, and regulate debate according to the usual parliamentary rules. In the absence of the president, a chairman *pro tempore* shall be appointed by the board." See p. 649, herein.



**Qualifications of directors.**—Section eight of the charter provides that all directors in the company shall be stockholders [but by acts Tenn., 1849–50, ch. 266, the charter was amended so as to allow the city of Charleston, S. C., to appoint two of her citizens as directors to represent her stock, and the Georgia Railroad and Banking Company to appoint one director to represent its stock]; they shall also be citizens of the United States and *bona fide* stockholders in their own right of at least forty shares, which they shall have held at least three months previous to their election. Charter, § 19, p. 12, herein.

Under this section they must have held their stock continuously for three months preceding the election. The by-laws provide that should any person be elected a director, who is at the time ineligible under the charter, the place of such person shall be considered vacant.

**Number of.**—Section eight of the charter provides that the number of directors shall be fifteen, which number is still adhered to. Under the general law, however, all private corporations are allowed to increase or diminish the number of directors to any number not less than five, upon a vote of the stockholders representing three-fourths of the capital stock. Acts Tenn., 1881, ch. 119; code Tenn. (M. & V.), § 1702; Shannon's code, § 2038.

It is questionable whether the said acts of 1881, ch. 119, would apply to railroads.

Prior to this time all railroads, by a majority vote, were allowed to reduce their directors to a number not less than six, and such vote became an amendment to its charter. Acts Tenn., 1868–9, ch. 23.

Again, by acts Tenn., 1859–60, ch. 202, provision was made for a reduction of the number of directors to nine, where state aid was granted and company agreed.

The by-laws provide for an election of fifteen directors. See p. 646, herein.

**Meetings of Board; Regular.**—The by-laws of the company provide that “Regular meetings of the board shall be held at the office of the company in the city of Nashville, Tenn., on

the second Tuesday of January, April, July, and October, at 11 o'clock A.M. See p. 646, 647, herein.

**Same. Special meetings.**—The by-laws also provide that "Other meetings of the board shall be held on the call of the president, as the business of the company may demand. Special meetings may also be held at the request, in writing, of any three members of the board. See p. 647, herein.

**Quorum; what constitutes.**—The by-laws also provide that "Eight members shall constitute a quorum for the transaction of business." See p. 647, herein.

1. A by-law is valid that provides for a less number than a majority to constitute a quorum. *Thompson on Corp.*, § 3921.

2. A majority of the entire board is always necessary to constitute a quorum, unless the charter, articles of incorporation, or a valid by-law or usage, confers that power upon a less number. 7 Cow. (N. Y.), 402; 23 Barb. (N. Y.), 304, 308; 39 Mo. App., 453. *Thompson on Corp.*, § 3913.

**Acts at board meeting without quorum voidable.**—The acts of directors done without a legal quorum are voidable at the election of the corporation, or at the election of a legally constituted meeting of directors, thereafter held. *Thompson on Corp.*, § 3915. See 11 Pick. (Tenn.), 484-7.

**Directors must act together as a board.**—In all matters involving the exercise of what might be termed a legislative or judicial discretion, and which the directors cannot therefore delegate to others, they can only bind the corporation by acting together as a board. A majority of them cannot undertake to act in their individual names for the board itself, and no act can be done affecting the ownership of property, except by a resolution of the board when regularly constituted, called and sitting in consultation. *Thompson on Corp.*, § 3905; 43 N. H., 343; 4 Daly (N. Y.), 305.

**Individual acts may be ratified by quorum.**—The acts of any one or more directors, however, though illegal, may be subsequently ratified by the quorum, and thus become binding upon the corporation. 36 N. H., 252, 270; 36 Me., 516; 13 Ind., 58; *Thompson on Corp.*, § 3928. The quorum must be legally assembled and acting as a body, however, to do so. 22 Conn., 335.

**Effect of the disqualification of a member of the quorum.—**

“The natural conclusion would be that if, for any reason, one whose vote is necessary to a resolution of a board of directors is disqualified from sitting and voting, the resolution will be deemed not to have been passed. This is the law in respect of the passage of resolutions in which some of the directors are directly and personally interested, such as resolutions concerning their own salaries. 84 N. Y., 190, 199; 1 R. I., 312; 53 Am. Dec., 624.

“But it does not follow from this that, in the absence of a statute so providing, what would disqualify a judge of one of the ordinary judicial courts from sitting in a given case, will disqualify a director or trustee of a corporation. An analogy has been rather sought in the case of ministerial public officers. Thus, where a certain prescribed majority of the governing committee of a social club have power to expel a member, the fact that one member of this majority, who voted for the expulsion, is related to the member of the committee or club who has moved for the expulsion, does not render the resolution of expulsion invalid.” 15 Abb. N. C. (N. Y.), 14; Thompson on Corp., § 3919.

**What is a quorum in case of unfilled vacancies.—**“It is held that a good elective assembly cannot be had without the presence of such a number of persons as will constitute a majority of the entire definite number, although the number present may constitute a majority of so many of the entire number as may happen at the time to be surviving and existing, otherwise, by suffering without supplying diminutions of their number, happening through death, resignation, or otherwise, the essential constitution of the body might be changed.” 1 Barn. & C., 609; Thompson on Corp., § 3917.

**A majority of assembled quorum may act.—**“If the quorum is lawfully assembled, a majority of its members may act, unless the charter, statute, or other governing instrument prescribes differently.” Cowp., 530, 538; 9 Barn. & C., 648, 851; 17 Am. Dec., 525; 12 Me., 354; 12 Mass., 189; 39 Mo. App., 453; 23 N. H., 555; 55 Am. Dec., 207; 35 N. H.,



477; Thompson on Corp., sec. 3914. See 11 Pick. (Tenn.), 484-7.

**Manner of assembling the meeting.**—"As no valid corporate act can be taken by the board of directors at a special meeting unless it has been duly and legally assembled [76 Cal., 153; 9 Am. St. Rep., 187; 30 Pac. Rep., 1024; 96 Cal., 73], it follows that where a statute, by-law, or other governing instrument directs the mode of assembling a special meeting, any corporate action taken at a meeting not so assembled will be voidable, in the absence of unanimous consent." Thompson on Corp., sec. 3935. See also 11 Pick. (Tenn.), 480.

**When notice of meetings must be given, and kind.**—"The circumstances under which notice of meetings must be given in order that the action taken thereat shall be valid may be summed up as follows: If the meeting is a stated one, the time and place of which is fixed by same by-law or regulation, no notice of it is necessary (50 Cal., 534); but where it is a special or called meeting, all the members must be notified of it. In the absence of statute, by-law, or other governing instrument prescribing the manner in which notice shall be given, personal notice is necessary, and it will not be sufficient to leave a copy of a written notice at the usual place of residence of a director. 55 Ark., 473, s.c. 29 Am. St. Rep., 60; 18 S. W. Rep., 759. The right of all the directors to notice is founded on the right of being present for the purposes of consultation, of which right a minority cannot be arbitrarily deprived by a majority." 13 Pa. St., 133, s.c. 53 Am. Dec., 450.

It follows that proceedings at a special meeting held by a bare majority of the members of a board of directors of a corporation, without notice to the other members, are void, although all those present voted in favor of the action taken, and the result would have been the same had the other members been present. 21 Or., 573; s. c., Am. St. Rep., 766; 28 Pac. Rep. 899.

But all this proceeds upon the assumption that it is practicable to give notice; and it has, accordingly, been held that the action of the majority is not invalidated, because absent

directors, out of the state, failed to receive notice of the meeting. 55 Conn., 455; s. c., 3 Am. St. Rep., 64; 12 Atl. Rep., 874; cited by Thompson on Corp., sec. 3936. See 11 Pick. (Tenn.) 480-8.

**Notice must specify object if extraordinary.**—If the special meeting is not called for ordinary transactions, the object thereof must be incorporated in the notice. *Id.*

**Notice of adjourned meetings must be given.**—Adjourned meetings are special meetings, and members not present when the adjournment took place must be notified. Thompson on Corp., sec. 3937.

**Meetings outside of state.**—The meetings of directors in the absence of anything to the contrary in the by-laws, charter, or general law of the land, may be held in the state, or out of the state, wherein the corporation resides, or is organized, and their acts, if otherwise binding, will be valid, for they are not the corporate body, and do not sit as such. 6 Conn., 458; 34 N. Y., 208; 38 Barb., 574; 63 Barb., 415; 4 Stew., 117; 45 Ga., 34; 35 Mo., 13; Rorer on Railroads, p. 211; Thompson on Corp., sec. 3933.

Proceedings at stockholders' meetings are also binding upon all those participating, though held without call or notice, and outside of the state where the company was incorporated, if there is no statutory restriction of corporate actions to the limits of the state. 139 U. S., 417 [35:229].

**Voting; cannot be by proxy.**—A director cannot delegate his power to vote in the board by giving a proxy to another person. He must be present in person for the purpose of consultation. 59 Hun. (N. Y.), 561; 14 N. Y. Supp., 16; s. c., 36 N. Y. St. Rep., 923; Thompson on Corp., sec. 3909.

By the old by-laws of the company any member of board might require "ayes and noes," and record it on the minutes. This has been repealed by those passed Dec. 14, 1898. See p. 646. *et seq.*, herein.

**Directors not exempt from military, road, and jury duty.**—By sec. 35 of the charter the directors of the railway were exempt from military duty, serving on juries, and working on public roads. Charter, sec. 35. See p. 22, herein.

This section, however, was declared class legislation, and

void in Tennessee. 4 Lea, 316. Also in Alabama. 91 Ala., 70.

**Duties and liabilities of directors.**—The board of directors shall, once in every year at least, make a full report on the state of the company and its affairs to a general meeting of the stockholders, and oftener if directed by a by-law, and shall have power to call a general meeting of the stockholders when the board may deem it expedient. Charter, sec. 18. They shall use good faith, care, attention, and circumspection in the management of the affairs of the company. They shall not exceed in their contracts the amount of the capital of the corporation and of the funds which the company may have borrowed and placed at the disposal of the board, and in case they should do so, the president and directors who may be present at the meeting at which such contract or contracts so exceeding the amount aforesaid shall be made shall be jointly and severally liable for the excess, both to the contractor or contractors and to the corporation; but any one may discharge himself from such liability by voting against such contract or contracts, and causing such vote to be recorded on the minutes of the board and giving notice thereof to the next general meeting of the stockholders. Charter, sec. 12. See 11 Pick. (Tenn.), 635, 136. The directors are individually liable, however, only for such specific debts as were contracted with their assent in excess of the paid-up capital and remain unpaid after the corporate assets are exhausted. 3 Pick., 60. See also 6 Bax., 278; 11 Pick. (Tenn.), 635; 8 Pick. (Tenn.), 598; 4 Lea 387. The diversion of funds to other objects than those mentioned, the payment of dividends which leave insufficient funds to meet liabilities, the keeping of false books, the making and publishing of false reports, are misdemeanors, and also subjects those actively concerned in the same to damages. Code Tenn. (M. & V.), § 1716–17; [Shannon's code Tenn., § 2067–68.]

Directors are trustees for the stockholders, and as such cannot create any relation which will make their personal interests antagonistic to those of the corporation. Nor are they allowed to make any profit out of their trust, and should they do so they will be liable to the company for secret profits. 8 Bax., 108; Thomp. on Corp., sec. 4024; 103 U. S., 651;



21 Wall., 617; 7 Wal., 299; 14 Mich., 477; 59 Maine, 277; 9 Yer. (Tenn.), 490; 10 Yer. (Tenn.), 197.

**Liability of directors, how enforced.**—Directors' liability must be enforced by general creditors' bill, unless company sues. 9 Pick. (Tenn.), 377; 5 Pick., 630.

**Powers. May pass by-laws, rules and regulations.**—By acts Tenn., 1847-8, ch. 70, which were passed and accepted by the company as an amendment to its charter, the directors have power to pass all regulations, rules, and by-laws, as may be necessary for the government of the corporation and the transaction of its business, and were given power to appoint three judges and two clerks, from year to year, for purpose of holding election of directors. Directors, however, have no right to pass by-laws that will deprive the stockholders of those fundamental powers whereby they control the officers of the corporation. Thompson on Corp., sec. 3973.

**May fill vacancies in board.**—They may fill all vacancies which may occur in the board during the period for which they shall have been elected, and in the absence of the president may fill his place by electing a president *pro tempore*. Charter, sec. 10, p. 8, herein.

See also by-laws to same effect, p. 647, herein.

**May mortgage property, when.**—[See Mortgage; Bonds].

**May call general meeting of stockholders when expedient.**—The directors shall have power to call a general meeting of the stockholders when they may deem it expedient. Charter, sec. 18, p. 11, herein.

**May lease roads.**—By acts Tenn., 1857-8, ch. 8, p. 5, the charter was amended so as to empower the company to lease any railway connecting with it, for such time and upon such terms and conditions as may be agreed upon between the president and directors of the company, and the president and directors of the railroad company contracted with. [See notes under "Lease" for discussion of this amendment and heading].

It will be seen from the discussion herein, under "Leases," above referred to, that it is now doubtful whether or not this act is operative.

**Declare dividends.**—The profits of the company, or so

much thereof as the board of directors may deem advisable, shall, when the affairs of the company will permit, be semi-annually divided among the stockholders in proportion to the stock each may hold. Charter, sec. 30. [See also "Dividends"].

The above section was amended by the acts Tenn. 1847-8, ch. 70, § 3, so that the company should be required to estimate and pay semi-annually to the several holders thereof a sum equal to six per cent per annum on the capital stock actually paid in, to be charged to the cost of construction; *provided*, a majority of the stockholders at their first regular meeting agreed thereto. This was accepted and held good in 8 Lea (Tenn.), 427.

**May elect president, permanent and pro tempore.**—The president of the company shall be elected by the directors, from among their own members in such manner as the regulations of the corporation shall prescribe. Charter, sec. 8. *Pro tempore*. In the absence of the president the directors may fill his place by electing a president *pro tempore*. Charter, sec. 10, p. 8, herein.

See, also, p. 647, herein. for by-laws to same effect on subject.

**To manage the affairs of company.**—The affairs of the company shall be managed by a board of directors. Charter, sec. 8, p. 6, herein.

**May allow lateral roads to be built within twenty miles.**—No road may be built, running laterally within twenty miles of the route adopted by this company, without the consent of the board of directors. Charter, sec. 13, p. 9, herein.

**To act as trustees in case of dissolution.**—If, by decree or otherwise, the said corporation shall be dissolved, the president and directors are created trustees, with such powers only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and distribute the property and effects to those who may be entitled thereto under the charter. Charter, sec. 37, p. 22, herein.

**May borrow money.**—A general power granted to the directors to manage the affairs of the corporation includes, accord-

ing to the American view, the power to borrow money when necessary in the course of its business. 6 Ex., 796; 33 L. J. (N. S.) 238; cited by Thompson on Corp., § 3988.

**May appoint judges and clerks of all stockholders' elections for directors.**—The board of directors of said company shall have power to appoint three judges and two clerks, from year to year, for the purpose of holding elections of directors. Acts Tenn., 1847-8, ch. 70, § 2.

**May make and transfer negotiable paper.**—The power to borrow includes, by a natural implication, the power to emit those evidences of indebtedness which are customary in the business world. Hence, the directors have the power to make, accept, or assign negotiable paper in the course of the business of the corporation. Thompson on Corp., § 3989; 6 Hum. (Tenn.), 516; 9 Hum., 264; 11 Hum., 22; 2 Cold., 655; 7 Heis., 288; 9 Heis., 524, 533.

**May petition for amendments to charter.**—Section 34 of the charter provides that the charter shall be amendable from time to time by the legislature, whenever the president and directors shall unanimously petition for amendments, specifying in the petition the nature of such amendments, and that when such amendments shall be adopted by the legislature and submitted to the directory and be accepted and adopted unanimously by the president and directors, they shall be obligatory on the stockholders, and not otherwise. See, also, § 1695 of Code (M. & V.), which allows directors to petition for amendments to change the name, increase the capital stock, or obtain other powers therein set out. [Shannon's Code, § 2028] (Tenn.) It is doubtful whether this can be done now under said section 34, of the charter, since our state constitution of 1870.

**Implied powers.**—A corporation has implied power to do all acts, and to use all power necessary to the use of the powers and privileges conferred by the charter or the organic law of the land. 2 Pick. (Tenn.), 598; 1 Pick. (Tenn.), 703.



## CHAPTER LXIV.

*DISSOLUTION—HOW DISSOLUTION MAY BE EFFECTED—DIRECTORS TRUSTEES IN CASE OF.*

**Directors to be trustees in case of dissolution.**—If, by decree or otherwise, the corporation shall be dissolved, the president and directors of said company are created trustees, with such powers only as may be necessary to collect the debts due the company, preserve the property, pay the debts, and distribute the property and effects of the company to those who may be entitled thereto under the charter. Charter, sec. 37, p. 22 herein.

It is unnecessary to give the laws of Alabama, Georgia, and Kentucky on this subject, as this company has never been chartered in those states.

**How company may be dissolved.**—[See general heading, "Charter," subhead, "Forfeiture of," p. 695, *et seq.*, herein.

**Corporations may exist after forfeiture or dissolution, for certain purposes, for five years.**—By the acts of Tenn. 1887, p. 328, §§ 1720 and 1721 of the code of Tenn. (M. & V.) were so amended as to allow all corporations whose charters expire, or have expired, by their own limitation, or are annulled by forfeiture or dissolved for any other cause, to exist as a corporation for the term of five years after said expiration or dissolution, for the purpose of prosecuting or defending suits by or against them, settling their business, disposing of their property, and dividing their capital stock; and that all such corporations shall, during the term of five years mentioned, but no longer, possess all the powers, rights, and privileges conferred upon them, and shall, during such period, be subject to all penalties and restrictions of their original charter. Acts Tenn. 1887, p. 328.

**Acts that do not work dissolution. Failure to elect directors.**—If the day of annual election of directors should pass without any election of directors, the corporation shall not thereby be dissolved, but it shall be lawful on any other day to hold and make such elections in such manner as may be prescribed by a by-law of the corporation. Charter, sec. 9, p. 7 herein. See also code (M. & V.) § 4168 (Tenn.).

**Same. Nonuser of franchise.**—The mere nonuser alone of a franchise does not work dissolution. 10 Lea, 436, 443; 8 Bax., 235; 7 Cold., 420; code Tenn., § 3431; (M. & V.), §§ 4168, 1712; 15 Lea, 104, 110; 40 N. J. Eq., 427; 87 Mo., 95; 12 Pick. (Tenn.), 253.

**Same. Miscellaneous.**—A corporation is not dissolved by insolvency, nor by the sale or assignment of all its property, nor by the appointment of a receiver. 12 Pick. (Tenn.), 252; 2 Pick. (Tenn.), 614. Nor by a failure to elect officers. 10 Lea (Tenn.), 443; 4 Cold. (Tenn.), 96; 10 Yer. (Tenn.), 218; 3 Hum. (Tenn.), 522; code Tenn. (M. & V.), § 4168; 86 Tenn., 614, 628; 12 Pick. (Tenn.), 252. Nor by the fact that all the shares are owned by one man. 12 Pick. (Tenn.), 252.

In Georgia a dissolution may be by forfeiture of charter and misuser of franchise. 100 Ga., 147.

**Right to remove rails, bridges, etc., from right of way in case of dissolution.**—See similar heading herein, under “Eminent Domain,” also under “Right of Way.”

**Right to remove, tear down, or abandon stations without working forfeiture or dissolution.**—See “Stations” herein. Refer to index.

## CHAPTER LXV.

### *DIVIDENDS—WHEN AND TO WHOM PAID—KINDS OF.*

**When dividends are to be paid. Charter provision.**—The profits of the company, or so much thereof as the board of directors may deem advisable, shall, when the affairs of the

company will permit, be semi-annually divided among the stockholders in proportion to the stock each may hold. Charter, sec. 30, p. 20 herein.

By acts Tenn. 1847-8, ch. 70, sec. 3, this section of the charter was amended so that the company should be required to estimate and pay semi-annually to the several holders thereof a sum equal to six per cent. per annum on the capital stock actually paid in, to be charged to the cost of construction; *Provided*, a majority of the stockholders at their first regular meeting agree thereto. Acts Tenn. 1847-8, ch. 70, sec. 3, but see discussion of right of legislature to amend the charter under heading, "Charter."

This amendment held good in 8 Lea, 427.

**Misdemeanor; to pay, when.**—The payments of dividends, however, which leave insufficient funds to meet liabilities is a misdemeanor, and also subjects those actively concerned in the same to damages. Code Tenn. (M. & V.), §§ 1716-17 [Shannon's code Tenn., §§ 2067-68].

**Stock dividends.**—"In the absence of a statute restraining such action, it is within the discretion of the directors of the corporation, or at least, within the power of the corporation, to issue additional shares of stock to represent its surplus profits, and to divide such stock *pro rata* among its existing stockholders. The reason is, in substance, that the effect of doing this is merely to change the form of ownership of the capital of the corporation." Thompson on Corp., sec. 2167; 93 N. Y., 162; 99 Mass., 101; 115 Mass., 471; 49 Pa. St., 270.

**Bonds in lieu of cash dividends.**—"A railroad corporation may issue to its stockholders bonds in lieu of cash dividends to represent earnings which have been used in construction." Thompson on Corp., sec. 2169; 47 Hun (N. Y.), 550; 87 Tenn., 406.

**To whom dividend paid.**—The dividends should be paid to those persons whose names appear on the books of the corporation as the owners of the stock. If the shares are transferred or assigned without notice to the company, or transfer of cer-



tificate on books of company by assigner or transferer, the company will be protected in paying dividend to party whose name appears on the books as the owner of the shares. Sec. 16 of the charter of this road provides that "the stock of said company may be transferred in such manner and form as may be directed by the by-laws of said corporation." See p. 10 herein. A by-law or rule of the company, however, requiring the transfer to be made on the books of the company, is a rule made solely for the benefit of the company. By it the company is enabled to know who are entitled to vote, and to whom to pay dividends. 91 Tenn. (7 Pick), 221, 238; 18 S. W., 546; 1 Spell. Priv. Corp., sec. 498; *Parker v. Bethel Hotel Co.*, vol. 34, No. 2, S. W. Rep., 217; 12 Pick. (Tenn.) 253.

**Guaranteed dividends.**—A railway has no power, in the absence of explicit grant of such power, to guarantee a specified dividend on its stock, or stock in an elevator company. 1 Pick. (Tenn.) 703; (85 Tenn.) 703.

**Dividends wrongfully paid.**—There can be no recovery, by or on behalf of shareholders, for dividends improperly declared and paid out to the shareholders themselves. 5 Pick. (Tenn.), 631.

## CHAPTER LXVI.

EMINENT DOMAIN—RIGHT OF—IN WHOSE NAME TO BE DONE—  
NATURE OF RAILWAY'S OWNERSHIP OF RIGHT OF WAY—  
SUCCESSIVE APPROPRIATIONS—RIGHT OF OTHERS  
TO CONDEMN PROPERTY OF THIS COMPANY.

**Right of Nashville & Chattanooga Railroad to condemn, under its charter, right of way and approaches.**—[In Tennessee]. The charter of incorporation of the Nashville, Chattanooga and St. Louis Railway was granted by the legislature in 1845 for the purpose of establishing a communication by railroad between Nashville and Chattanooga. Sec. 24 of its charter, p. 15, herein, provides that "where any lands, or

right of way may be required by the said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or for any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated; and the said commissioners, before they act, shall severally take an oath before some justice of the peace, faithfully and impartially to discharge the duty assigned them, etc." See section itself on p. 15, herein, as to how they were to arrive at valuation.

But what is to be understood as comprehended in the power, to take any lands, or right of way, that may be required for the purpose of constructing the road? Justice McKinney, in construing this section of the charter of the road, held that, "To enable the company to effect the ends contemplated by the charter, the transportation, or conveyance, of persons, goods, merchandise and produce, over said railroad, there must, of necessity, be a way of approach to the road, an avenue for the passage of persons and vehicles to and from the road, some place for receiving and delivering, loading and unloading the goods, merchandise and produce conveyed, or to be conveyed, by the company over the road. Without this the charter would be nugatory. Land, or right of way, for those purposes, is just as necessary as for the bed of the road, and indeed must be regarded as constituting part of the road." Hence, under this section of the charter, any land may be condemned, not only for the right of way, but for a way of approach to the road, by persons or vehicles, and for a place for receiving and delivering, loading and unloading the goods, merchandise and produce conveyed, or to be conveyed, over the road. 11 Hum. (Tenn.), 348.

1. **Fee simple title acquired if condemned and paid for.**—It will be noticed that by sec. 24 of the charter above referred to (p. 16, herein) that as soon as the commissioners appointed to assess the value made their return, and the railway paid or tendered the amount assessed, that the title to the land or right of way immediately vested in the company in fee simple. 4 Sneed (Tenn.) 528 [280]. For character of title acquired where land not paid for or contract made, see further on in this chapter.

2. To what branches does the foregoing section apply?—The charter of the Northwestern Branch, p. 93, herein; the Lebanon Branch, p. 138, § 15, herein; the Fayetteville Branch, p. 156, herein; the McMinnville Branch, p. 179 and 194 herein; the Huntsville Branch, p. 214 herein; the Jasper Branch, p. 265 herein; and the Shelbyville Branch, p. 286 herein, all have similar sections to the above, and hence on those branches the above will also apply. As to those branches originally chartered under the general Acts of Tennessee, the condemnation would only vest an easement in the company and not a fee.

**Cannot condemn land for workshops, storehouses, materials and houses for agents, under charter.**—The supreme court also held in the same case that for the purpose of depositories, storehouses, houses for agents, workshops, or for procuring timber, stone or other material necessary for the construction of the road, etc, which are not necessarily required to be contiguous to the termination of the road, that the company had no power to condemn lands under this section of the charter, but that it must rely on negotiations with the owners thereof, which it was allowed to do by purchase under section 21 of its charter. 11 Hum. (Tenn.), 348.

**In absence of contract or condemnation, railroad entitled to two hundred feet right of way.**—Section 25 of the charter of the Nashville, Chattanooga & St. Louis Railway provides that, “in the absence of any contract with the said company in relation to land through which the said road may pass, signed by the owner thereof, or by his agent, or claimant, or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with a space of one hundred feet on either side of the center of said road, has been granted to the company by the owner thereof, and the company shall have good right and title thereto, and shall have, hold, and enjoy the same as long as the same be used only for the purposes of the road, and no longer, unless the person or persons owning the said land at the time that part of the road which may be on said land was finished, or those claiming under him, her or them, shall apply for an assessment for the value of said land, as herein before directed, within five years next after that part of said road was finished, and, in case the said owner



or owners, or those claiming under him, her or them, shall not apply for such assessment within five years next after the said part was finished, he, she, or they shall be forever barred from recovering the said land, or having any assessment or compensation therefor; *Provided*, Nothing herein contained shall effect the right of *feme covert*s or infants until two years after the removal of their respective disabilities. Charter, sec. 25, p. 17 herein.

1. It will be noticed that the character of title acquired by the railroad under the above section of the charter is considerably different from that acquired under section 24. In the latter case, as soon as the commissioners appointed to assess the value made their return, and the railway paid or tendered the amount assessed, the title to the land or right of way immediately vested in the company in fee simple. 4 Sneed (Tenn.), 528 [280]. The title acquired under section 25, above set out, is materially different. In that case the land is not paid for, and, though the company is given one hundred feet on each side of the center of the road, in the absence of any contract to the contrary, where the owner failed to apply in time for assessment, yet the title secured is only an easement, and not a fee simple, and the landowner is entitled to the use of it until necessary for railroad purposes, though he must then give it up. 5 Pick. (Tenn.), 293; 16 Pick. (Tenn.), 209; 17 Pick. (Tenn.), 62.

2. For width of right of way on the various branches, see discussion herein, under their respective headings. Refer to index. See also notes to succeeding sections herein.

**This section valid, and landowner's possession not adverse. Railway may take when necessary for railroad purposes.—** This section of the charter has also been construed by the supreme court and held valid. By virtue of the franchise acquired by the railroad company under this section, it has the right to an easement of one hundred feet on each side of the center of the road, when necessary for railroad purposes, unless the landowner applies in time for assessment of value. Only the number of feet, however, on each side up to a hundred to be taken from time to time, as the necessities of the road require. Hence, it has been held that the railway may construct a side track within the one hundred feet, though the landowner had been cultivating the land, under fence, for thirty years. The statute of limitations did not run, for the railway, in taking the land, did not acquire the fee therein, but only an

easement. This easement was not exclusive of the adjoining landowner's right, except when necessary for railway purposes. This being so, the adjoining landowner's possession of a part of the two hundred feet right of way not actually used by the railway is not adverse to the company's right, so long as the land was not required for railroad purposes, and there was no open assertion of any right hostile to or incompatible with the company's easement therein. 5 Pick. (Tenn.), 293. See also *Railroad v. Gordon*, decided at the December term of the supreme court, at Nashville. See also 17 Pick. (Tenn.), 62.

1. **Statute of limitations runs, when.**—The statute never commences to run until the ground becomes necessary for railroad purposes. 16 Pick. (Tenn.), 209.

2. **To what branches does this section apply?**—The above section not only applies to the main branch, but also to the Northwestern (p. 93 herein), the Lebanon (p. 138 herein), the Fayetteville (p. 156 herein), the McMinnville (pp. 179 and 194 herein), the Huntsville (p. 214 herein), the Jasper (p. 265 herein), and the Shelbyville (p. 286 herein). As to the other branches, see discussion herein under their respective chapters. Refer to index for branch desired. See also Alabama, Georgia, and Kentucky acts on this subject, further on in this chapter.

3. As to branches in Alabama, Georgia, and Kentucky, see further on in this chapter.

**Necessity for taking; who to determine.**—The supreme court of Tennessee having decided that the railroad company could occupy all or any portion of its right of way acquired under section 25 of its charter when necessary for railroad purposes, it becomes important to ascertain who is to pass upon such necessity. In the case of *Railroad v. French* it was held that "a water tank is a species of property necessary for the purposes of a railroad, and there is no question made or proof introduced to show that it was not necessary to erect it at this point. We cannot presume that the railroad would place the tank there for any other purpose than that of a railroad use. If it was erected there to annoy and harass plaintiff, or for any other than a necessary railroad purpose and convenience, that fact should have been shown by the proof." 16 Pick. (Tenn.), 209-12. See, also, 17 Pick. (Tenn.), 62. From this it appears that the necessity for the taking is not within the sole discretion of the railway company,

though the burden of proof will be upon the plaintiff to show the absence of such necessity. The question will be one of fact. This holding is not in entire accord with the decisions of other states upon the subject. Most of them hold that the necessity of taking additional portions of the right of way for the purpose of placing additional tracks thereon, broadening tunnels, etc., together with the mode of occupancy and the degree of exclusiveness necessary or proper for the convenient exercise of its franchises, are within the absolute discretion of the managers of the railway, and that they are the sole judges of what is proper or convenient as means for attaining the end and performing the service to the public for which the corporate franchises were granted. *Brainard v. Clapp*, 10 Cush. 6; *Boston Gas Light Co. v. Old Colony & Newport R. R. Co.*, 14 Allen, 444; *Ham v. Salem*, 100 Mass., 350; 104 Mass., 9. See, also, 5 Am. & Eng. R. R. Cases, 389. Thus, where a railway had located its road upon or across a public highway or street without any restrictions as to the number of tracks, it was held that the company was authorized to put down and maintain upon any part of its right of way such a number as were essential to the convenient transportation of its business, and for that purpose might make any necessary alteration in the grade or surface of the highway, and such alteration would not constitute a nuisance or an unlawful obstruction, if in all other respects the highway is left in good repair so as to be safe and convenient to passengers. Rorer on Railroads, p. 505; 14 Gray (Mass.), 380; 46 Ia., 389; 16 Am. Railway Reports, 45; 54 Penn. St., 103; 6 Pick. (Tenn.), 638.

**Effect where substantial house erected within 100-foot right of way.**—Under the decision in the 5 Pick. case, it was left somewhat in doubt, whether or not the railway could exercise its right to the 100-foot right of way, even when necessary for railway purposes, when to do so would require that a land-owner should tear down a substantial house, erected and used by him as of right, for seven years or more, without objection on the part of the railway. The erection of such a house, it was thought, might possibly imply an intention to appropriate



the necessary land upon which it was erected, forever, and thus be construed into an open assertion of a right hostile to, or incompatible with, the company's easement, which would not be the case in temporary structures, etc. Since that decision, however, the supreme court has held that even the erection of a substantial house by the landowner would not preclude the railroad from occupying the ground on which it is built when necessary for railroad purposes. "A person," said the court, "who builds upon the right of way of a railroad does so at his peril, no matter what paper title he may have from a third person; and all persons are affected with notice of the extent of the right of way when it depends upon the charter provisions." 16 Pick. (Tenn.), 209; see also 5 Pick. (Tenn.), 295. The same doctrine was also held in an oral opinion by Judge Caldwell, of the supreme bench, in the case of *L. & N. R. R. Co. v. W. W. Gordon*, from Giles county, delivered at the December term of 1896-7, at Nashville.

**Statute of limitations runs, when.**—The statute of limitations in such cases never commences to run until the ground becomes necessary for railroad purposes. 16 Pick. (Tenn.), 209; 5 Pick. (Tenn.), 295. See, also, 17 Pick. (Tenn.), 62.

**Nature of railways; ownership of right of way; may erect buildings on, when.**—In the absence of contract, condemnation, or actual purchase, the railway only owns an easement in the land. It does not own the fee. The original landowner, or his heirs, or assigns, own that, as well as the right to its possession, except when necessary for railroad purposes. 5 Pick. (Tenn.), 293; 16 Pick. (Tenn.), 209.

The railway cannot divert the use for which it was allowed to condemn, or appropriate it—that is, for railway purposes—yet it is allowed a large discretion in determining to what use it may be put.

Thus, it may erect water tanks, and any buildings necessary or convenient for the transaction of its business, and for the purposes of facilitating business with the road; and by parity of reasoning, it may license third persons to erect and occupy such buildings. 1 Pick. (Tenn.), 703; 16 Pick. (Tenn.), 209; 17 Pick. (Tenn.), 62; 91 U. S., 454.

And it is a reasonable conclusion that it may lease any portion of its right of way to third person, for the erection of such a building, as for instance, grain elevators, etc. Thompson on Corp., sec. 5878; Lewis on Em. Dom., sec. 588; 17 Pick. (Tenn.), 62; 19 Mo. App., 411.

But not for buildings or structures for private business, unconnected with the operation of the road. Lewis on Em. Dom., sec. 584.

It may place its tracks on any part of the right of way and change their location when necessary. 43 Ia., 501; 7 Allen, 523; 19 Mo. App., 419; 141 Mass., 174; 85 Mo., 86; 16 Pick. (Tenn.), 209; 17 Pick. (Tenn.), 62; 5 Pick. (Tenn.), 293; Lewis on Emi. Dom., sec. 584.

It may dig a well on the right of way for the purpose of securing a supply of water, though the effect may be to drain a spring on adjoining land. 35 Ia., 558; Lewis on Emi. Dom., sec. 584; but see 7 Lea., 388; 11 Lea (Tenn.), 382.

It cannot take, however, from a stream which it crosses water for its locomotives beyond the quantity which an individual might take as a riparian proprietor. 112 Pa. St., 34; Lewis on Em. Dom., sec. 585.

It is entitled to the exclusive possession of the right of way, if such possession is necessary to the proper operation of the road. 5 Pick. (Tenn.), 293; 17 Pick. (Tenn.), 62; 16 Pick. (Tenn.), 209; 22 Kan., 285; 32 Kan., 608; Lewis on Emi. Dom., sec. 586.

It may run a tunnel under the right of way, or put tracks above ground. 5 Pick. (Tenn.), 293.

It has the right to occupy its right of way beyond its tracks, cuts, and fills, but only to such distance and to such extent within the charter limit as to maintain its track and operate its trains. It can only go beyond these limits for necessary railroad purposes. It cannot sell, transfer, encumber, or use its right of way except as necessity and convenience may demand for the proper operation of its road. It cannot license the appropriation of any part of such right of way to private business purposes, nor to public purposes, except so far as needful

and helpful to the operation of the road itself. 17 Pick. (Tenn.), 62.

If condemnation was made as provided for in section 24 of the charter (p. 15 herein), and the amount of damages so assessed, paid or tendered, then the title to the right of way vested in the railroad company in fee simple, and it can do anything with it, or build any kind of structures on it, as any other owner could do. The disadvantage of the title so acquired, however, would be that the statute of limitations would doubtless run where adjoining landowners built on right of way. The title acquired under section 25, therefore, is the more valuable.

The above applies to all branches.

**Right to trees, herbage, gravel, etc., on right of way.**—The right to the easement carries with it the right to so much earth, gravel, stone, trees, and timber within their lines of location as may be needed for the construction and maintenance of the entire road. Such material may be carried from point to point on the line of road covered by the charter under which the right of way was originally acquired to supply deficiencies and diminish excesses of each of such material on any other point of said road. It is probable, however, that it cannot be taken from a point on the right of way acquired under one charter and be moved to a point on the right of way acquired under another, as, for instance, removing it from some point on the Lebanon Branch to some point on the Centreville Branch. Rorer on R. R., p. 325; 39 N. H., 564; 10 Cush., 6; 9 Vroom, 28; 19 Kan., 517; 2 Iowa, 288; 5 Am. Rep., 624; Lewis on Emi. Dom., sec. 587. See also 35 N. H., 564; 33 Kan. 746. It cannot remove or sell them, however, merely for profit. It must be used in the construction or maintenance of the road, and not done through wantonness or spite.

1. The above applies to all branches.

2. **Where right of way paid for or condemned.**—If the right of way at the point in question was purchased in fee, or if condemned under section 24 of the charter, then the railway owns the same in fee simple and can remove or sell, gravel, etc., from it at pleasure.



**What damages to adjoining landowner included in condemning right of way.**—"The assessment for the right of way covers all damages sustainable by the landowner over whose land the right of way is taken, not only for the easement, but for all incidental injuries, inconveniences, and dangers incurred or liable to occur by the proper construction and use of the road, or by any act necessary to such proper construction and use; increased rates of insurance, caused by increased liability to fire; additional expense of fencing; stoppage of drainage; drying up of springs; diminution of value by separation of tracts into separate parts; irregularity of surface," etc. In other words, all injuries or damage resulting from the rightful construction of the road are covered, and the compensation for same are exhausted by the original assessment made by the commissioners in assessing for the right of way. Rorer on R. R., p. 324; 87 Ky., 391; 91 Ky., 487; 69 Ga., 396.

The above applies to all branches.

**Overflowing for twenty years gives right to do so.**—If a railroad for twenty years continuously maintains its roadbed so as to overflow the adjacent lands, claiming the right to do so, and without interruption or recognition of the landowners' rights, it acquires by prescription a right to do so. 6 Pick. (Tenn.), 157; 11 Lea (Tenn.), 382.

**Successive appropriations; right to take land for right of way, side tracks, depots, approaches, etc., not exhausted.**—The power of a railway to condemn property for its right of way, depots, approaches, etc., from time to time, as necessity requires, after the exercise of the right in the first instance and the completion of the road has not received in Tennessee that consideration which the importance of the subject requires. Cases frequently occur where the right of way, depot facilities, approaches, etc., originally appropriated under the charter, become inadequate, as trade, commerce and travel increase with the growth of the country. A railway, in its infancy, could not possibly anticipate what conveniences of this description the future may require. Not only does commerce and population increase, but the laws governing the reception and

convenience of passengers, patrons, and the public generally, render constantly the necessity of larger and more commodious depots, freight houses, approaches, and rights of way. If the company was compelled to anticipate in advance all such future needs, it would not only have to pay for enormous tracts of property in its incipency, but often and often be saddled with property which it could never use at all. Not only would this be so, but if, from economy or poverty, a small amount of land was taken, or business grew beyond any reasonable anticipation, the railway might, in a few years, find itself unable to discharge its duties to the public.

For these reasons it is almost universally held, though the question seems never to have been positively decided in this state, but doubtless would be if tested, that, "in the absence of any restriction or limitation, the power to take private property may be exercised by the grantee road from time to time, as necessity requires;" and, that "a railroad company, after having located and completed its road, may, as the expansion of its business requires, take additional land for right of way, terminal facilities, depot accommodations, side tracks, or for any other purpose for which its compulsory powers may be exercised." Lewis on Em. Dom., secs. 259, 247; 1 Md., 553; 52 Ind., 16, 42; 101 Ind., 366; 113 Ill., 156; 26 Kan., 669; 13 Neb., 361; 54 Pa. St., 103; 57 Ark., 359; 58 Pa. St., 249; Elliott on Railways, secs. 930, 962; 104 Ills., 323; 8 Nev. 100; 58 Md., 539; 17 Ill., 123; Rorer on Railroads, p. 372, 275; 16 Ohio St., 390; 54 Pa. St., 103; 10 Vroom, 45; 67 Barb., 426; 52 Ind., 16; Randolph on Em. Dom., p. 107, sec. 116; 36 Conn., 196; 87 Ala., 501; 85 Ala., 106; 101 Ind., 366; 87 Ky., 72; 71 Ill., 592; 45 Mo., 212; 18 Pick. (Mass.), 472.

This being so, the question presents itself, is there any restriction or limitation in the charter of the Nashville, Chattanooga & St. Louis Railway as to its power to take or condemn property from time to time as the expansion of its business requires, for additional right of way, depots, terminal facilities, sidetracks, etc. ? If there are no such restrictions or lim-

itations then the power is possessed, and it will not be limited to its purchasing power alone.

Section 24 of the charter provides that "where any lands or right of way may be required by the said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause the same cannot be purchased from the owner, the same may be taken at a valuation to be made by five commissioners, or a majority of them, to be appointed by the circuit court of the county where some part of the land or right of way is situated," etc. See p. 15 herein. From this it will be seen that power is given to take land or right of way for the purpose broadly of constructing the road. No restriction is made as to the number of feet to be taken, nor is any limitation provided as to the time in which it shall be done, the only proviso being that it shall be taken only when required for the purpose of constructing the road.

Section 21 of the charter provides that "the said company may purchase, have and hold in fee, or for a term of years, any lands, tenements, hereditaments, which may be necessary for said road, or appurtenances thereof, or for the erection of depositories, storehouses, houses for the officers, servants, or agents for the company, or for workshops or foundries to be used for said company, or for procuring timber, stones or other materials necessary for the construction of the road or its appurtenances, or for effecting transportation thereon." See p. 13 herein.

The supreme court, in construing these two sections together, held as before explained that it was evidently the intention of the legislature to require the railway to purchase, or negotiate for, and not to condemn lands for depositories, store houses, houses for agents, workshops, or for procuring timber, stone, or other material necessary for the construction of the road, as was provided for in section 21 as aforesaid, but that it could condemn or take the land under section 24, not only for the right of way, but for approaches to the road by persons or vehicles and for places for receiving and delivering, loading



and unloading goods, merchandise, and produce, conveyed or to be conveyed over the road. 11 Hum. (Tenn.), 348.

For these purposes, however, no restriction or limitation either as to the amount of land, or the time in which it is to be taken, was imposed. Under section 24 of the charter, therefore, any number of feet, whether one hundred or ten thousand, could have been taken, if absolutely necessary for railway purposes. It is true section 25 of the said charter provides that "in the absence of any contract with the said company in relation to land through which the said road may pass, signed by the owner thereof, or by his agent, or claimant, or person in possession thereof, which may be confirmed by the owner, it shall be presumed that the land upon which the said road may be constructed, together with a space of one hundred feet on each side of the center of said road, has been granted to the company by the owner thereof, etc." See p. 17 herein.

Even this section, however, does not restrict the railway to one hundred feet on each side of the center of the road. It simply provides that in certain contingencies it shall be presumed that the land upon which the road is constructed, together with a space of one hundred feet on each side of the center of the road, has been granted to the company. In other words, that it was conveyed to it, not condemned. It does not restrict the railway to this one hundred feet, however, for all time to come, but simply places it in the attitude of having originally purchased that number as an easement, instead of having taken it under section 24 of its charter; for as the presumption of a grant would arise, the presumption that it had never exercised its right to condemn as to that particular tract of ground would of necessity also arise. There is nothing in this section, therefore, that restricts the railway to any particular number of feet, nor limits the time in which it may act. It stands in the attitude under this section of having originally considered that one hundred feet on each side of its road was sufficient for its necessities at that time, and of having purchased an easement over the same. 5 Pick. (Tenn.), 293, 294.

If necessities arise in the future, however, which will require more ground, as before explained, there is nothing in this section that could be construed into an intention on the part of the legislature of limiting or restricting the railway to that particular number of feet.

The only argument, if any at all could be made, in answer to the foregoing would be that, as the legislature, in section 39 of the charter (p. 23 herein), required that the railway should be commenced within three years after the passage of the act of incorporation and be finished within six years thereafter, that it intended thereby to limit the power of the railway to take or condemn land to that time. This is a very ingenious argument, and has often before been advanced on such occasions, but the great weight of authority has always been adverse to this contention, holding that such clauses in charters of railway companies were aimed only at a speedy operation of the road, in order that the objects for which they are created should be accomplished—namely, the convenience and accommodation of the public—and that they in no manner prevented successive appropriations. 58 Md., 539; 54 Pa. St., 103; Elliott on R. R., sec. 971.

Should our state, therefore, follow the great weight of authority in such cases, when the question is properly presented, the railway may from time to time, as the expansion of its business requires, take additional land for right of way, terminal facilities, depot accommodations, side tracks, etc.

**To what states and branches does this apply?**—The foregoing section applies to all the states through which the road runs. See 57 Ala., 501; 85 Ala., 106; 87 Ky., 72.

It also particularly applies to the following branches: The main branch, p. 1; Northwestern, p. 93 herein; Lebanon, p. 138 herein; Fayetteville, p. 156 herein; McMinnville, pp. 179 and 194 herein; Huntsville, p. 214 herein; Jasper, p. 265 herein; and the Shelbyville Branch, p. 286 herein.

It does not apply to those branches originally chartered under the general acts Tenn. 1875, if the proposed appropriation exceeds two hundred feet, as such roads are limited by their charters to two hundred feet, and can under no circumstances go beyond it. 17 Pick. (Tenn.), 95.

**Railway may condemn land to broaden right of way for additional track, side tracks, etc., even in face of contract not to do so.**—It is well settled that one board of directors of a railway cannot bargain away its right of eminent domain or curtail it in any way, so as to bind subsequent boards. If the right to condemn for this purpose originally existed, it cannot be taken away by contract. Thus it was held that the mere fact that a railroad had confirmed certain rights to a landowner by contract did not preclude it from condemning those rights. 102 Mass., 19.

Again, where a railroad accepted from another a grant of a right of way across the grantor's road thirty feet wide, on the positive condition that it should only be used for two tracks, it was held that the grantee could, nevertheless, condemn an additional twenty feet if necessary to be occupied by more tracks. 113 Ill., 156.

Again, it was held that, where a landowner dedicated certain land to a railway for a right of way on condition that no greater width should ever be taken, that even this did not estop the railway from condemning a broader strip when necessary. 87 Ky., 72.

The right of eminent domain cannot be impaired or defeated by any private contract between the corporation and the owner of property which the legislature may subsequently deem necessary for public use. 9 Ky. L. R., 924; 7 S. W. R., 553; 87 Ky., 72; Elliott on R. R., sec. 963; 44 Hun. (N. Y.), 194.

A stipulation in a contract that no side tracks shall be built renders the entire contract illegal and void. 5 Col., 270; 6 Col., 2; 11 Kan., 602; 64 Ill., 414; 71 Ill., 592; 45 Mo., 212; 18 Pick. (Mass.), 472; 5 Ore., 117.

**How condemnation made now. Charter provision.**—The right to take property under the power of eminent domain, conferred in a charter, is an inviolable right that cannot be withdrawn by the legislature, nor surrounded with such conditions upon its exercise as will destroy its value. 14 Wend. (N. Y.), 51; s. c., 18 Wend. (N. Y.), 9; 31 Am. Dec., 313.

“ But where a statute prescribed a mode by which lands may



be condemned to the use of chartered railways, and thereafter the legislature, by general act, prescribed a different mode, the company must proceed in the mode prescribed by the later act. Such a statute does not impair vested rights, but merely affects remedies." Thompson on Corp., § 5407, citing 3 S. C., 381; s. c., 16 Am. Rep., 729; 47 N. J. L., 59; s. c., 54 Am. Rep., 114; see also § 5437, Thompson on Corp.; 81 Ky., 221.

Hence to this extent section 24 of the charter of the Nashville, Chattanooga & St. Louis Railway may doubtless be altered by subsequent legislation. 12 Heis. (Tenn.), 54; see also 85 Ky., 270; 81 Ky., 221.

Subsequent legislation has provided general laws for the condemnation of land, which will be found further on in this chapter.

"As a rule, however, a general law does not repeal a prior special law merely because it embraces the same subject matter. An intent to repeal the special law must be manifested either by express words or by language extending the operations of the general law to all cases, etc. Accordingly a general law in regard to the assessment of damages in condemnation proceedings will not supersede the provisions of special charters on the subject, unless expressly made applicable to all cases of condemnation, or plainly intended as a revision of all prior laws, general and special, upon the subject." Lewis on Em. Dom., § 248; 34 Wis., 173; 25 N. J. L., 54; 5 Ind., 413; 36 N. J. L., 198; 25 Mo., 540. 95 N. C., 77; 3 S. C., 381. See also 3 Sneed (Tenn.), 119; 1 Head (Tenn.), 114; 3 Lea (Tenn.), 557; 3 Cold. (Tenn.), 438; 16 Lea (Tenn.), 111; 3 Bax. (Tenn.), 152; 1 Pickle (Tenn.), 451; 4 Pickle (Tenn.), 138; 13 Pickle (Tenn.), 707; 5 Pickle (Tenn.), 723; 12 Pickle (Tenn.), 17; 157 U. S., 58; 109 U. S., 556.

**Railway acquired a fee under section 24 of charter.**—Under this section, if the railway company paid or tendered the amount assessed by the commissioners as its value, the right of way immediately vested in the company in fee simple. 4 Sneed (Tenn.), 528 [280]. If condemnation is made now under general laws, only an easement is required.

**Railway may condemn lands for lateral roads not exceeding eight miles, when.**—Under the general law of the State of Tennessee any railway company chartered under the laws of the state, and now operating, or which may hereafter operate any line of railroad within this state, is granted authority and power to build lateral roads, not exceeding eight miles in length, extending from the main stem of said line of railroad to any mill, quarry, mine, manufacturing plant, or the bank of any navigable stream, without the making of any amendment to the charter of said railroad; *Provided*, Private property shall not be taken for the uses of such company, or the construction of such lateral branches without condemnation thereof as now provided by law. Acts Tenn., 1895; p. 314. [As to method of condemning see post, this heading]. [Shannon's Code Tenn.; § 1872].

For method of condemning for branches fifteen miles in length, see succeeding section.

The words "main stem" in the above act would doubtless be construed to apply not only to the main stem proper, but to all well established and important branches that were originally constructed under their own charters and subsequently purchased or leased by this company; as, for instance, the "Northwestern Branch," the "Centerville Branch," etc.

These roads were originally the "main stem" of their respective companies. They were not purchased under a restricted authority to purchase branches, but under a broader authority to purchase other railroads. This being so the authority conferred by the legislature to purchase and operate other roads, would, by implication, constitute the roads so purchased a part of the main stem.

In this connection it may also be added that all railroads chartered under the general law may amend their charters, so as to build branch roads. Acts Tenn., 1889, p. 303. This has no application to the N. & C. charter proper, however, as it was chartered by a special act. It may have applied to the charters of those branches incorporated under the general law, however.

**Railway may condemn land for lateral and branch roads fifteen miles in length, when.**—"Any railroad company operating a railroad, or any part of same, in Tennessee, or that

may hereafter do so, shall have power to build or acquire lateral or branch lines of railroad, not to exceed fifteen miles in length, for any one of such lateral or branch roads, extending from its main stem in Tennessee, to any mine or quarry, or into any mineral section of country tributary to such main stem, for the purpose of developing the mineral or material resources of the country; and such railroads shall have power to condemn private property for use in the construction and operation of such lateral or branch roads; *Provided*, That private property shall not be taken therefor, against the owner's will, without condemnation thereof, as now provided by law in other cases, and such roads shall be, as common carriers, subject to the same duties and restrictions as the main lines with which they connect. Acts Tenn., 1899, p. 587, sec. 1.

1. The words "main stem" in the above act would also doubtless be construed to apply not only to the main stem proper, but to all well-established and important branches that were originally constructed under their own charter and subsequently purchased or leased by this company. For reasons, see preceding section.

2. For Alabama, Georgia, and Kentucky law on subject, see further on in this chapter.

**The above power does not authorize consolidation or exemption from tax.**—"Nothing in the above section shall be so construed as to make it lawful for any railroad corporation to purchase or consolidate itself with any competing line of railway, whether constructed or in course of construction; *And provided*, That nothing in this act shall be construed to exempt railroad companies from paying state, county, or municipal taxes upon such extension or lateral branches. Acts Tenn., 1899, p. 587, sec. 2.

**Where lateral road is to extend from purchased branch, or railway, in whose name to condemn.**—It is a well established principle that when authority to take property by virtue of the power of eminent domain is conferred by the legislature, it becomes a personal trust, and cannot be delegated or transferred, except by legislative sanction. 10 Gray, 40; 56 Pa. S., 413; 26 Wend., 485; Lewis on Em. Dom., sec. 243.

Purchasers under a mortgage, grantees, or lessees of the



property and franchises of a corporation authorized to condemn property cannot, by virtue of such purchase, grant, or lease, exercise such power. Being a personal trust, the power must be exercised by the grantee in person, and in case of a corporation, by the governing body, which ordinarily is the board of directors. 15 Ohio St., 21; 52 Col., 159; 145 Mass., 450; 109 Mass., 103; 26 Wend., 485; 111 Mass., 125; Lewis on Em. Dom., sec. 243.

It would follow, therefore, that the right to condemn under the charter would die with the sale of the road unless provided otherwise by legislative sanction, and the purchasing road would have to act under its own charter and in its own name. There are eminent authorities that hold, however, that where corporate property and franchises are transferred by judicial sale the franchise to be a corporation does not pass, but that the right to condemn, whether considered as a franchise or not, passes as a valuable right necessary to the full enjoyment of the property. 83 N. C., 489. See, also, 93 U. S., 217; 34 Vt., 484. This doctrine has even been approved where the purchaser was not a corporation. 39 La. An. 427; 10 Ohio St., 372; Randolph on Em. Dom., p. 100, sec. 108.

**Where lateral road to extend from leased road; who to condemn.**—A lease of the property and franchises of a corporation does not destroy its right to condemn. 35 Hun., 220; 99 N. Y., 12. This is true, though the term of the lease is for the entire life of a corporation. The lease is but a mode of enabling the corporation to discharge its duties to the public. Lewis on Em. Dom., sec. 244; 67 N. Y., 227; 113 Ill., 156; 13 Neb., 361; Thompson on Corp., sec. 5895; 109 Mass., 103. Condemnation, therefore, should be exercised by the lessee road in the name of the lessor. Same, Randolph on Em. Dom., p. 100, sec. 108. Or the lessee company may itself condemn. 99 N. Y., 12; 35 Hun., 220; 112 U. S., 609; Elliott on R. R., sec. 958.

**Railway may build branch roads to connect with other railways and condemn land therefor.**—All the railroads of the state have power to construct their roads so as to cross each

other, if necessary, by the main trunks or branches, or to unite with each other as with branches. Acts Tenn. 1851-2, ch. 151, sec. 16; code Tenn. (S.), 1504; (M. & V.), 1249a.

Under this, a railway company, authorized by its charter to condemn land, may condemn land to build a track connecting or uniting it with another railroad. 14 Lea (Tenn.), 65; 9 Bax. (Tenn.), 522.

**Right of railway to condemn, or appropriate country road or county highway.**—[See, also, "Highway."] It is unlawful for any corporation, or person, to construct or use an ordinary steam railroad for the transportation of freight and passengers upon any country road or county highway of this state, without the consent of the county court of the county in which said road lies; and, before it shall be lawful for the county court to give such consent, the corporation desiring to construct such railroad shall procure and file with the county court the written consent of the owners of the lands abutting upon such road or highway, aggregating in such abutting length at least one-half of all the lands in value, such value to be the value of said abutting lands, running back from said road two hundred feet upon both sides of the road to be occupied by said railroad; and any ordinary steam railroad constructed upon such county road or highway, without the consent of the said county court, first lawfully obtained, shall be considered a nuisance, and liable to be treated as such, both by the public authorities and by private persons. But, when the consent of said county court shall have been first lawfully obtained, such railroad may be lawfully constructed and operated upon such road or highway, under such restrictions as to the manner of construction and mode of use as the county court may see fit to impose in granting the license; *Provided*, That railroads already constructed upon any road or highway of this state, under a license of the county court, are hereby declared to be lawfully constructed, and this act shall not be construed as requiring a new license from the county court for such construction or operation under its provisions. Act Tenn. 1889, p. 447, sec. 1 [Shannon's code Tenn., § 1879].

The same act further provides "that this act shall not be construed so as to prevent said owners of land abutting upon such road from obtaining due compensation for damages arising from the construction of such railroad, such damages to be just compensation for all property taken, injured, or damaged by the building or operations of said railroad, said damages to be ascertained and paid before the right to appropriate the property to be occupied shall accrue as now provided by law." Acts Tenn., 1889, p. 447, sec. 2; [Shannon's code Tenn., § 1880].

These sections, however, do not apply to county roads or highways appropriated by the railway prior to its passage. Such roads were taken under the provisions of the charter of the company.

**Right of other roads to condemn right of way; depot facilities, yards, etc., of Nashville, Chattanooga & St. Louis Railway.**—It is a well settled principle of law that the lands once taken for a public use, pursuant to law, by one railroad company, cannot, under general laws and without special authority from the legislature, be appropriated by another railway, or for any other public use, under the power of eminent domain. Lewis on Emi. Dom., p. 352, sec. 267; Randolph on Emi. Dom., pp. 88, 166; 93 Pa., 150; 124 Mass., 368; 53 N. Y., 574; 77 N. Y., 284; 98 N. Y., 6; 34 W. Va., 155; 23 Minn., 167; 53 Ga., 120; 48 Ohio St., 273; 82 Ala., 297; 122 Ill., 473; 84 N. Y., 308; 75 Va., 780; 47 Cal., 549; 98 Ga., 164.

That the legislature of the state of Tennessee has never granted such authority so as to apply to the Nashville, Chattanooga & St. Louis Railway and present possessions is very clear.

1. By Acts Tenn., 1899, ch. 399, p. 920, railroads hereafter to be built were prohibited from taking a wider strip for a right of way than necessary, and other railroad companies were empowered to condemn a joint use of their tracks through narrow passes or gorges, or along cliffs. This act, however, expressly declared that it should only apply to roads hereafter to be built, and hence does not apply to the Nashville, Chattanooga & St. Louis Railway or any of its present branches. The act itself is set out further on in this chapter and speaks for itself.

2. In Alabama railroads chartered under general law may condemn right of way of other roads, but not its roadbeds. 82 Ala., 297; 87 Ala., 501, 520.



It is true that § 1549 of the code of Tennessee (M. & V.) provides that "any person or corporation authorized by law to construct any railroad, turnpike, canal, toll-bridge, road, causeway, or other work of internal improvement, to which the like privilege is conceded, may take the real estate of individuals, not exceeding the amount prescribed by law, or by the charter under which the person or corporation acts, in the manner and upon the terms herein provided." Code Tenn. (M. & V.), § 1549.

It is further true that by the acts of Tenn. 1885, p. 245, this section was amended so as to make it include the condemnation of property, privileges, rights, and easements of private corporations for public purposes, under certain conditions, but neither the section nor its amendment confers the right, in express terms, to condemn property already devoted to railroad uses. The power, therefore, does not exist in Tennessee.

The right of eminent domain is a dominant legislative power, only called into exercise by the enactment of a valid statute, and when a party asserts a right to seize land previously appropriated to public use, he must sustain his claim by producing a statute clearly conferring the asserted authority. It will not be presumed, in the absence of such a statute, that the legislature intended to again seize property which had been once appropriated for a public use. 88 Ind., 453; 6 So. R., 404; 118 Mass., 561; 8 Fed. Rep., 858; 68 N. Y., 167, 175; 36 Conn., 255; Lewis on Em. Dom., 352, 364; Randolph on Em. Dom., 88, 166; Elliott's Roads and Streets, 167; 89 Ga., 215; 20 Hun. (N. Y.), 201; 98 Ga., 164.

Nor will the authority be presumed to exist, in the absence of such a statute, to condemn for a joint use with the elder company. 81 Ill., 523.

This is so, whether the lands were originally bought or condemned. 17 R. I., 324; 21 Atl. Rep., 965.

The rule, moreover, is not confined to the tracks or right of way of a railroad company, but it applies also to the grounds occupied by all the appliances necessary for the successful operation of the road, and the company has the right to con-

struct its road and make its plans with a liberal consideration of future, as well as of existing, necessities. 28 Am. & Eng. R. R. Cases, 266; 122 Pa. St., 511; 6 Atl. Rep., 564; 9 Am. St. Rep., 128; 30 Minn., 359; 91 N. Y., 552; Lewis on Em. Dom., p. 352, sec. 266.

But land held by the railway, whether acquired by purchase or appropriation, which is not employed in nor needed for the proper exercise of its corporate franchise, having regard to the probable expansion and increase of future business, is not within the reason or operation of this rule, and may be taken by other railways under the power of eminent domain. 47 Am. & Eng. R. R. Cases, 72; 48 Ohio St. 273; 27 N. E. Rep., 464; 17 W. Va., 812; 66 Ill., 174; Lewis on Em. Dom., p. 353; sec. 267.

It has also been held that property acquired by a railroad company by contract, and used for a purpose for which it could not condemn, is subject to the power of eminent domain the same as though it belonged to an individual. 19 Ohio St., 299; Lewis on Em. Dom., p. 355; sec. 269.

It is very clear, however, as before explained, that as regards all property and right of way necessary for railway purposes, having regard to the probable increase and expansion of future business, that no law now exists in Tennessee which would enable one railroad to arbitrarily condemn the whole, or even a part, of the right of way, depot facilities, shops, etc., of another railroad.

Moreover, it is extremely doubtful whether such a right now exists, even though that part of the right of way sought to be appropriated should be actually necessary, and without which the condemning road could not get from one of its termini to the other, as, for instance, through a mountain pass where there was no other possible route. But even should this latter right exist, it must be clearly shown that the property so sought to be condemned is actually necessary. 138 Mass., 277; Lewis on Em. Dom., 353; 16 Phila. (Pa.), 621; 122 Pa. St., 533; 17 Atl. Rep., 234; 124 Mass., 368; 9 Am. St. Rep., 128.

Railways chartered in the future may have joint use of their right of way condemned through narrow passes, gorges, or along cliffs. Acts Tenn., 1899; p. 920.

It certainly could not do so where the condemnation is sought simply for the sake of convenience or economy. 28 Am. & Eng. R. R. Cases, 266; 122 Pa. St., 511; 4 Cold. (Tenn.), 419; 15 S. E. Rep., 124; 89 Ga., 215; 124 Mass., 368; 9 Am. St. Rep., 128. 4 Pick. (Tenn.), 752.

In this connection it might be mentioned that section 14 of the charter of the railway provides that "the company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise and produce over the said railroad by them to be constructed," etc. Charter, § 14.

This section seems at first blush to convey a franchise exempt from eminent domain, as it purports to convey the exclusive right of transportation over the road. Whether the legislature intended to do so or not, however, is immaterial, as the grant of such a right would be unconstitutional. The state cannot bargain away its sovereign power, and any act attempting to divest it of the power would be void, even though incorporated in the charter of the road. Vol. 14 Am. & Eng. Corp. Cases, p. 417; 18 Conn., 451; 102 Pa. St., 123; 48 Mich., 433; 53 Ala., 211; 65 Ga., 160; 7 N. H., 35; Lewis on Em. Dom., sec. 275.

The foregoing discussion, therefore, is made independent of this section of the charter, which is only referred to in order to show it was not overlooked.

**Can future legislation change this law so as to legally authorize other roads to condemn the right of way, depot facilities, etc., of other roads?**—That the legislature cannot amend the charter of the Nashville, Chattanooga & St. Louis Railway so as to compel it to allow other roads to use its depot facilities, right of way, etc., is too clear for argument, as before explained. See "Charter—How Amended," p. 678 *et seq.* herein.

A more serious question arises, however, in determining the right of future legislatures, under their power of eminent



domain, to pass an act in express terms authorizing railways to condemn a right of way over the whole or a part of the lines of other railways, provided a fair compensation is given therefor. Many authorities seem to hold that such an act would be the exercise of a proper legislative authority. 45 Barb., 138; s.c. 72 N. Y., 330; 60 Md., 263; Lewis on Em. Dom., p. 355, sec. 269; 81 Ill., 523.

Other writers, however, question the soundness of the doctrine. In any event, the right does not now exist in Tennessee.

**Right of cities to condemn railroad property for streets, alleys, etc.**—It seems to be well settled that a general statutory power, conferred by a city charter, to take lands for public streets will not be presumed to authorize the city to take land already lawfully appropriated for a depot building and appurtenances by a corporation duly empowered to acquire lands for such purposes. 30 Minn., 359; 15 N. W. Rep., 684; 23 Minn., 167; 14 Am. & Eng. R. R. Cases, 34; 91 N. Y., 552; 24 N. Y., 345; 98 Ga., 164.

Under such general authority to lay out highways, a part of the right of way of a railroad cannot be taken longitudinally, nor can the way be laid through depot grounds, shops, and the like, which are devoted to special uses in connection with the road and necessary to its operation and in constant use in connection therewith. 39 N. J. L., 28; 36 Conn., 255; 30 Minn., 359; 91 N. Y., 552; 53 Ga., 120; Lewis on Em. Dom., p. 352, sec. 266; 98 Ga. 164.

It has been held, however, that a slight interference with the platform of a depot would not prevent the establishment of a highway or street. 46 N. J. L., 644.

**Right of cities and counties to construct crossings for streets and highways.**—A general authority to lay out highways and streets is sufficient to authorize a layout across the right of way of a railway. Lewis on Emi. Dom., p. 351, sec. 266; 23 Ohio St., 510; 49 Mo., 480; 35 Minn., 141; 24 N. Y., 345. But not to construct crossings so as to go through depot buildings, appurtenances, yards, etc. Lewis on Emi. Dom., p. 352, sec. 266; 98 Ga., 164. Under a statute which pro-

vided that, if a turnpike or way should be laid out over a railroad "the said turnpike or way may be so made as to pass over or under said railroad, and said turnpike or way shall in no case be so made as to obstruct or injure such railroad;" it was held that a crossing at grade could not be made, but that the "highway must be carried under or over the railway by a bridge." Lewis on Emi. Dom., p. 351; 2 Allen, 107; 58 Vt., 234.

A statute provided as follows: "When a new way or road is opened or made across a way or road already existing and in use, the new way must be so constructed as to cause as little injury as possible to the old way or road." It was held that a street across a railroad must be carried over by a viaduct. *Id.*; 46 Md., 425.

An express authority, however, to lay out a highway across the track of a railroad is authority to cross all the tracks at any place. *Id.*; 24 N. Y., 345.

It has also been held that the question whether any part of the land of a railroad in or adjacent to its depot grounds is in actual use for depot or other purposes pertaining to the operation of its road, could only be determined in a direct proceeding for that purpose, and that it would not only be impracticable, but impossible, to try the question in a condemnation proceeding. 92 Mich., 33; 52 N. W. Rep., 790.

Before a city or county can construct a crossing, however, they must show the necessity therefor and condemn the same as other property is condemned under the laws of eminent domain, paying the railway therefor. Neither, however, can condemn a crossing through the depot grounds, yards, etc. See 8 Pick. (Tenn.), 1. See code Tenn. (S.), § 1844 *et seq.*; also code Tenn. (S.), § 1617 *et seq.*; 96 Ala., 571.

When a street is opened across the track of a railroad, it does not preclude the railroad company from laying additional tracks at the crossing when necessary. 91 Ga., 573.

**Right of railways to condemn crossings of other railways.**—By the acts of Tenn. 1851-2, ch. 151, sec. 16, it was provided that "all the railroads of the state shall have power

to construct their roads so as to cross each other, if necessary, by the main trunks or branches, or to unite with each other as with branches." Code Tenn. (M. & V.), § 1249 *a*; code Tenn. (S.), § 1504.

This section is a general amendment to railroad charters, and empowers a railroad whose charter authorizes it to condemn land for a right of way to condemn it in like manner for crossings with other railways, and it has the rights, and is liable only, as in other condemnation cases. 14 Lea (Tenn.), 65.

For right in the States of Alabama, Georgia, and Kentucky, see p. — herein.

**Right of telephone and telegraph companies to condemn right of way over railway bridges; trestles right of way, etc.**—Any person or corporation, organized by virtue of the laws of this state, or of any other state of the United States, or by virtue of the laws of the United States, for the purpose of transmitting intelligence by magnetic telegraph or telephone, or other system of transmitting intelligence the equivalent thereof, which may be hereafter invented or discovered, may construct, operate, and maintain such telegraph, telephone, or other lines necessary for the speedy transmission of intelligence along and over the public highways and streets of the cities and towns of this state, or across and under the waters, and over any lands or public works belonging to this state, and on and over the lands of private individuals, and upon, along, and parallel to any of the railroads or turnpikes of this state, and on and over the bridges, trestles, or structures of said railroads. Acts Tenn. 1885, p. 120, ch. 66, sec. 1 [Shannon's code Tenn., § 1830].

1. The supreme court held that nominal damages alone should be given a railroad by a telegraph company for space occupied on right of way by its posts, where the use of the railroad of said right of way is not interfered with. 17 Pick. (Tenn.), 62.

2. For rights of telephone and telegraph companies to condemn in Alabama, Georgia, and Kentucky, see further on in this chapter.

**No obstructions; damages.**—But the ordinary use of such public highways, streets, works, railroads, bridges, trestles, or structures and turnpikes shall not be thereby obstructed, nor the



navigation of said waters impeded, and that just damages shall be paid to the owners of such lands, railroads, and turnpikes, by reason of the occupation of said lands, railroads, and turnpikes by said telegraph or telephone corporations. Acts Tenn. 1885, p. 120, sec. 1 [Shannon's code Tenn., § 1831. See, also, 1868-71].

**Condemnation.**—That in the event such telegraph or telephone companies should fail, upon application to such individuals, railroads, or turnpike companies, to secure such right of way by consent, contract or agreement, then such telegraph or telephone corporations shall have the right to proceed to procure the condemnation of such property, lands, rights, privileges, and easements in the manner prescribed by law for taking private property for works of internal improvement. Acts Tenn. 1885, p. 120, sec. 2; [Shannon's code, § 1832]; see also § 1868-71.

[The manner of condemning is set out further on in this chapter.]

Only nominal damages allowed where use by railroad not interfered with. 17 Pick. (Tenn.), 62.

**Peaceful entry to survey, etc.; damages.**—When any such telegraph or telephone company shall desire to construct lines on or along the lands of individuals, or on the right of way and structures of any railroad, or upon and along any turnpike, the said telegraph or telephone company may by its agents have the right to peacefully enter upon such lands, structures, or right of way, and survey, locate, and lay out its said lines thereon, being liable, however, for any damage that may result by reason of such act. Acts Tenn. 1885, p. 120, sec. 3; [Shannon's code Tenn., § 1833.]

Under the above acts a telegraph or telephone company will have the right to erect its poles along the right of way of the railway, either within the space inclosed by fence or on the outside, provided they do not interfere with or obstruct the operation of the railway, and, provided further, that reasonable compensation is paid therefor, both to the railway and to

the landowners at those points along the right of way where the railway does not own the fee.

The railroad company owns the fee if it condemned under section 24 of its charter. 4 Sneed (Tenn.), 528 [280].

This is so, as by operation of law where the parties did not apply in time for assessment, the railway only took from the landowner the one hundred feet on each side of the center of the track, as an easement. It did not take the fee, and when the telegraph or telephone companies attempt to condemn a right of way it will be attempting to subject the land to another and a different servitude not contemplated in the original condemnation proceedings, and for that reason the landowners, heirs or assigns, will be entitled to additional compensation. See 17 Pick. (Tenn.), 62.

The condemnation proceedings, however, will have to be instituted in every county through which the telegraph or telephone companies propose to run their lines.

**Railroads hereafter to be built, not to take wider strip for right of way than necessary. Other roads, rights as to, when.**—No railroad company, whose railroad may hereafter be built in this state, shall have the right to hold to the exclusion of other railroads to be hereafter built, by purchase or condemnation for its right of way, a wider strip of land than shall be necessary for its reasonable use in the transaction of its business; and any land owned, or right of way held, or hereafter acquired by any such railroad company, which a jury of inquiry in condemnation proceedings shall find necessary for such reasonable use and business of the company, may be condemned for the use of other railroads now under construction, or hereafter to be built, in like manner as other private property. And no railroad company shall have the right, by surveying or locating its line of railroad, to defer building the same to the exclusion of other companies that may sooner and more certainly build upon such line of route, but the company which, in good faith, first actually constructs its road over such route, shall have preference in the location thereof; *Provided*, That, if in determining any controversy over same, it shall appear to the

court that the second company, in good faith, intends to, and probably will construct its road, the first line constructed shall be located, if practicable, so as not to make it unreasonably expensive to construct the other one. Acts Tenn. 1899, ch. 399, p. 920, sec. 1.

It will be noticed that the above act only applies to railroads "hereafter to be built" and hence does not apply to the Nashville, Chattanooga & St. Louis Railway, and present branches.

**Other roads may condemn joint use of tracks in narrow passes, gorges, or along cliffs of future roads, when and how.**—In case any railroad company has acquired or owns a right of way, over which its road is not already built, through or along any narrow pass, cliff, or gorge, where it may be unreasonably expensive or impracticable to put down more than one track or line of railroad, any other railroad company, in good faith, desiring to build its line of road through or along the same narrow pass, cliff, or gorge shall have the right to condemn a joint use of the right of way through or along the same, and if, after any railroad hereafter to be constructed through or along the same shall already have been constructed, any other railroad so desiring to build through or along such narrow pass, gorge, or cliff shall have the right to condemn a joint use of so much of the track as may be necessary, in like manner as railroads have the right to cross each other; *Provided*, That reasonable compensation shall be paid to the railroad company owning such right of way, or to the one whose right of way, or right of way and track, may be so condemned for such joint use with the other road, for its property and improvements and injury to its business, if any, which compensation, together with such reasonable restrictions as the jury of inquiry may prescribe at the expense of the second road for safely using such joint track, shall be fixed by said jury as in other cases of assessment of damages in the condemnation of private property; *Provided further*, That nothing herein contained shall be construed to affect any rights railroad companies whose roads are already constructed and being operated may have in respect to rights of way over which rail-



roads are already being operated, it being the intention of this act not to in any manner add to or take from such rights as they may have therein, but to mutually apply only to roads or extensions or branch roads hereafter to be built; *And provided furthermore*, That nothing herein contained shall be construed to allow any railroads to consolidate, or escape payment of taxes on such new lines as may be constructed, or such extensions as may be made hereunder. Acts Tenn. 1899, ch. 399, p. 920, sec. 2.

It will be noticed that the above act only applies to railroads "hereafter to be built," and, hence, does not apply to the Nashville, Chattanooga & St. Louis Railway and present branches.

### HOW LAND MAY BE CONDEMNED.

[In Tennessee.] **Land may be taken for improvements.**—Any person or corporation authorized by law to construct any railroad, turnpike, canal, toll-bridge, road, causeway, or other work of internal improvement to which the like privilege is conceded, may take the real estate of individuals not exceeding the amount prescribed by law, or by the charter under which the person or corporation acts, in the manner and upon the terms herein provided. Code Tenn. (M. & V.) § 1549 (1325); [Shannon's code Tenn. § 1844.]

By acts of Tenn. 1885, p. 245, this section, together with those following, up to and including sec. 1572, were extended so as to include the condemnation and taking the property, privileges, rights, or easements of private corporations for public purposes or internal improvements. There is a provision, however, in the act as to telegraph and telephone companies, which is here omitted as it does not affect railroads. Railways may condemn land under this for depots, way of approach, etc., 11 Hum. (Tenn.), 349. This section does not apply to private enterprises, however great their public convenience. 4 Cold. (Tenn.), 419. Hence it does not apply to freight elevators. *Id.*; 4 Pick. (Tenn.), 752. The land of persons under disability may be taken like that of other people. 3 Head (Tenn.), 63.

By acts Tenn. 1885, ch. 39, p. 94, cities were allowed to condemn land under these sections adjacent to corporation line for waterworks purposes, pumping station or reservoir, right of way for water pipe from pumping station or reservoir, etc.

By acts of Tenn. 1891, ch. 41, p. 77, municipal corporations allowed to condemn under these sections for new streets, avenues, squares, parks,

promenades, sewers, gasworks, hay markets, markethouse, fire engine house, station and workhouses, etc.

By acts Tenn. 1889, ch. 149, p. 289, street railways allowed additional privileges of condemnation under these sections.

Counties may condemn land under these sections for turnpikes, etc. 8 Pick. (Tenn.), 1.

**For what railroads may, and may not, condemn under these sections.**—A railroad company may condemn land for its right of way; for a way of approach to its road; and for a depot, but not for depositories, storehouses, houses for agents, workshops, etc. 11 Hum. (Tenn.), 349-52. But see discussion of this in first part of heading "Eminent Domain."

**No legislative power to authorize condemnation for certain enterprises.**—Under these sections, as for instance, a saw mill and paper mill combined. 3 Yer. 41, 51-54. A railway for an incorporated elevator company, from its sheds to a river, for loading and unloading boats. 4 Cold. (Tenn.), 419. A railway for an incorporated hotel company, from the hotel to the river or depot. 4 Cold. (Tenn.), 425. A church or schoolhouse. 4 Cold. (Tenn.), 425.

But property may be condemned for grist mills. 3 Yer. 41, 51-53; Code Tenn., (M. & V.), 2653; [Shannon's Code (Tenn.), § 3437].

**Telegraph and telephone companies.**—These companies may also condemn land under these sections. They may condemn use of railroad right of way. Only nominal damages to be paid where use of railroad not interfered with. 17 Pick. (Tenn.), 62, 95.

**Proceedings, petition, etc.**—The party seeking to appropriate such land shall file a petition in the circuit court of the county in which the land lies, setting forth in substance:

1. The parcel of land, a portion of which is wanted, and the extent wanted.

As to sufficiency of description see 3 Lea, 482.

2. The name of the owner of such land, or, if unknown, stating the fact.

3. The object for which the land is wanted.

4. A prayer that a suitable portion of land may be decreed

to the petitioner, and set apart by metes and bounds. Code Tenn. (M. & V.), § 1550 (1326); [Shannon's Code (Tenn.), § 1845].

**Opening and closing case.**—The burden of proof being upon the party seeking the condemnation to show the necessity thereof, he is entitled to open and close the case. 4 Pick. (Tenn.), 510.

See Iowa Code 1851, § 760. Petition need not be sworn to. 2 Iowa, 562.

**Notice to owner.**—Notice of this petition shall be given to the owner of the land, or, if a nonresident of the county, to his agent, at least five days before its presentation. Code Tenn. (M. & V.), § 1551 (1327); [Shannon's code (Tenn.), § 1846].

**Owner nonresident, proceeding.**—If the owner is a nonresident of the state, or unknown, notice shall be given by publication, as provided in this code in similar cases in chancery. Code Tenn. (M. & V.), § 1552 (1328); [Shannon's code (Tenn.), § 1847].

**Proceedings only bind parties.**—All parties having any interest in any way in such land may be made defendants; and the proceedings will only cover and affect the interest of those who are actually made parties, unborn remainder-men being, however, bound by proceedings to which all-living persons in interest are parties. Code Tenn. (M. & V.), § 1553 (1329); [Shannon's code (Tenn.), § 1848].

As to parties, see 2 Head, 65, 176. A tenant for life, or for years, as well as the owner of the reversion, is an interested party, and must be compensated. Same.

**Writ of inquiry of damages.**—After the requisite notice has been given, if no sufficient cause to the contrary is shown, the court shall issue a writ of inquiry of damages to the sheriff, commanding him to summon a jury to inquire and assess the damages. Code Tenn. (M. & V.), § 1554 (1330); [Shannon's code (Tenn.), § 1849].

**Clerk to issue writ; sheriff to summons jury.**—By consent of parties, or on application of the plaintiff, unless objection is made by the defendant, the writ of inquiry may be issued by the clerk, as of course, after service of notice, on which the sheriff will summon the jury. Code Tenn. (M. & V.), § 1555 (1331); [Shannon's code (Tenn.), § 1850].



**Jury to be disinterested.**—The jurors shall not be interested in the same, or a similar question, and shall possess the qualifications of other jurors, and may be nominated by the court, selected by consent of parties, or summoned by the sheriff. Code Tenn. (M. & V.), § 1556 (1332); [Shannon's code (Tenn.), § 1851].

**Failure to attend.**—If named by the court, and the persons named are unable to attend when summoned, the place of such persons shall be supplied by the sheriff. Code Tenn. (M. & V.), § 1557 (1333); [Shannon's code (Tenn.), § 1852].

**Number of jurors; challenges.**—The jury will consist of five persons, unless the parties agree upon a different number, and either party may challenge for cause, or peremptorily, as in other civil cases. Code Tenn. (M. & V.), § 1558 (1334); [Shannon's code (Tenn.), § 1553].

Where five were appointed by the court, but two having failed to appear, the sheriff summoned two others in their stead, and the report was signed by the original three, it was held good. 12 Heis. (Tenn.), 54. 57.

**Notice of taking inquest.**—The sheriff shall give the parties, or their agents, if residents of the county, three days' notice of the time and place of taking the inquest, unless the time has been fixed by the order of court. Code Tenn. (M. & V.), § 1559 (1335); [Shannon's code (Tenn.), § 1854].

**Jury to be sworn by sheriff.**—The jury, before proceeding to act, shall be sworn by the sheriff, fairly and impartially, without favor or affection, to lay off by metes and bounds the lands required for the proposed improvements, and to inquire and assess the damages. Code Tenn. (M. & V.), § 1560 (1336); [Shannon's Code (Tenn.), § 1855].

**To examine ground and assess damages.**—The jury will then proceed to examine the ground, and may hear testimony, but no argument of counsel, and set apart, by metes and bounds, a sufficient quantity of land for the purposes intended, and assess the damages occasioned to the owner thereby. Code Tenn. (M. & V.), § 1561 (1337); [Shannon's Code (Tenn.), § 1856].

As to sufficiency of description, see 3 Lea, 482.

This was a case on trial in circuit court.

The roadbed is a permanent landmark, and the description is sufficient where the jury designate the distance from the center of the railroad track on each side. 3 Lea (Tenn.), 482. But the points of beginning and ending on the road should be designated in some way.

Where railway fails to institute proceedings, or in any manner to designate the land to be appropriated for the right of way, its entry and construction of its road must be regarded as an appropriation of so much of the land as the law authorizes for such purposes. 3 Lea (Tenn.), 481.

**Damages; how estimated.**—In estimating the damages the jury shall give the value of the land without deduction, but incidental benefits which may result to the owner by reason of the proposed improvement may be taken into consideration in estimating the incidental damages. Code Tenn. (M. & V.), § 1562 (1338); [Shannon's Code, (Tenn.), § 1857.

"The value of the land" is the fair cash value of the land taken for public use, if the owner were willing to sell, and the company desired to buy that particular quantity at that place and in that form. 2 Swan (Tenn.), 437; 9 Heis. (Tenn.), 508; 12 Heis. (Tenn.), 56; 9 Heis. (Tenn.), 509; 3 Head (Tenn.), 67, 600; and this too without deduction. See also 4 Pick., 510.

**Only nominal damages** where telegraph company condemns use of railroad right of way when. 17 Pick., 62. In ascertaining the value of the land, incidental benefits and advantages are not to be considered, but they are to be considered and set off against incidental damages. 2 Swan (Tenn.), 437, and cases cited above.

**Incidental benefits are:**—The general enhancement of lands in the neighborhood; the special effect of a location at that particular place; the enhancement in price of the remainder of the land, and the increased facilities of travel, etc. See also 4 Pick. (Tenn.), 510.

**Incidental damages are:**—The necessity for new fences; removal of buildings; being cut off from wells, mills, barns, servants' houses, etc.; 2 Swan (Tenn.), 439-40; 12 Heis. (Tenn.), 56; 9 Heis. (Tenn.), 508.

Incidental damages, resulting to landowner from the taking of a portion of his lands, must be estimated upon the assumption that the lands taken will be applied, within a reasonable time and in a proper manner, to the use for which they were condemned, and that due care and proper skill will be exercised in the manner of their use. 4 Pick. (Tenn.), 510.

Where damage results to other property from wrongful or negligent use, original suit must be brought. 4 Pick. (Tenn.), 510, 523-26; 7 Lea (Tenn.), 388; 11 Lea (Tenn.), 382.

**Depreciation** of remaining land caused by the reasonable apprehension of danger, excited by the erection of a reservoir upon the part taken, on account of its liability to inherent defects and unavoidable accidents,

notwithstanding skilful construction and careful operation, is properly incidental damages. 4 Pick. (Tenn.), 510.

**Interest allowed upon amount of damages assessed from the taking and appropriation of the land.** 4 Pick. (Tenn.), 510. Where it has not been allowed in the court below, however, and should have been, the supreme court may correct the judgment in that particular without reversing and remanding case. *Id.*

The inquiry as to fair market value, in cash, must be restricted, both in evidence and the court's charge, to the general value of the land, estimated upon consideration in a single view of all the elements of value. Estimates based upon particular qualities or capabilities of the land—such as its value as a stone quarry, or its suitability for a reservoir site, to the exclusion of all other elements of value, are inadmissible. Such elements of value must not be priced separately, but the land, with all its qualities and capabilities, must be taken and valued as one whole. 4 Pick. (Tenn.), 510.

**Separate action for overflowing lands.**—To recover damages for careless, negligent, or wrongful use of property taken, independent action must be brought. Hence, where railway negligently constructs its road-bed so as to dam up the surface water, or any stream causing overflow of adjoining lands, it is liable, but independent action must be brought. 7 Lea (Tenn.), 388; 11 Lea (Tenn.), 382; 6 Pick. (Tenn.), 157; 4 Pick. (Tenn.), 523. Overflow for twenty years gives right, however. *Id.*

**Report returned in writing.**—The report of the jury shall be reduced to writing, signed by a majority of the jurors, delivered to the sheriff, and by him returned into court. Code Tenn. (M. & V.), § 1563, (1339); [Shannon's Code (Tenn.) § 1858].

**Confirmation of report.**—If no objection is made to the report, it is confirmed by the court, and the land decreed to the petitioner, upon payment to the defendants, or to the clerk for their use, of the damages assessed, with costs. Code Tenn. (M. & V.), § 1564, (1340); [Shannon's Code (Tenn.), § 1859].

**Exception to report and new writ.**—Either party may object to the report of the jury, and the same may, on good cause shown, be set aside and a new writ of inquiry awarded. Code Tenn. (M. & V.), § 1565, (1341); [Shannon's Code (Tenn.), § 1860].

**Appeal; new trial.**—Either party may, also, appeal from the finding of the jury, and on giving security for the costs, have a trial anew before the jury in the usual way. Code Tenn. (M. & V.), § 1566, (1342); [Shannon's Code (Tenn.), § 1861].

Appeal lies, although there was a second jury and new writ of inquiry, under the last section. 12 Heis. (Tenn.), 57.



**Costs against appellant, when not.**—If the verdict of the jury, upon trial, affirms the finding of the jury of inquest, or is more unfavorable to the appellant than the finding of such a jury, the costs shall be adjudged against such appellant; otherwise, the court may award costs as in chancery cases. Code Tenn. (M. & V.), § 1567 (1343); [Shannon's code (Tenn.), § 1862].

**Appeal does not suspend work; how.**—The taking an appeal does not suspend the operations of the petitioner on the land, provided such petitioner will give bond, with good security, to be approved by the clerk, in double the amount of the assessment of the jury of inquest, payable to the defendants, and conditioned to abide by and perform the final judgment in the premises. Code Tenn. (M. & V.), § 1568 (1344); [Shannon's code (Tenn.), § 1863].

**Preliminary surveys; damages.**—A person or company actually intending to make application for the privileges herein contemplated, and entering upon the land of another for the purpose of making the requisite examination and surveys, and doing no unnecessary injury, is liable only for the actual damage done, and, if sued in such case, the plaintiff shall recover only as much costs as damages. Code Tenn. (M. & V.), § 1569 (1345); [Shannon's code (Tenn.), § 1864].

**Damages to be prepaid, or bond on appeal.**—No person or company shall, however, enter upon such land for the purpose of actually occupying the right of way until the damages assessed by the jury of inquest and the costs have been actually paid, or, if an appeal has been taken, until the bond has been given to abide by the final judgment, as before provided. Code Tenn. (M. & V.), § 1570 (1346); [Shannon's code (Tenn.), § 1865].

If the damages are not paid, or bond given as provided for when an appeal is taken, equity will enforce payment, or restore the owner to his property. 6 Cold. (Tenn.), 150, 162; 7 Heis. (Tenn.), 518, 535. See also notes to § 1562, (M. & V.) code Tenn.

Construing this and the next section together, the property may be taken before compensation is actually paid, but only after certain provision has been made for the payment. *Id.*; 13 Lea (Tenn.), 671.

**Owner may have inquest, or sue for damages, when ; and proceedings.**—If, however, such person or company has actually taken possession of such land, occupying it for the purposes of internal improvement, the owner of such land may petition for a jury of inquest, in which case the same proceedings may be had, as near as may be, as hereinbefore provided; or he may sue for damages in the ordinary way, in which case the jury shall lay off the land by metes and bounds and assess the damages, as upon the trial of an appeal from the return of a jury of inquest. Code Tenn. (M. & V.), § 1571 (1347); [Shannon's code Tenn., § 1866].

Commissioners may be appointed whether parties have made an unsuccessful effort to agree or not. 2 Head, 624, 626. Owner may either file petition for a jury, or bring an action on the facts of the case. 3 Lea, 678; 2 Lea, 620; 2 Head, 65, 171; or he may enjoin. (Sec. 1570.) But the owner will be estopped from bringing ejectment if he permitted possession to be taken, and consented in the first instance for the improvements to be made. 2 Lea, 655. Party applying for compensation must show title. 3 Head, 63. The statutory remedy provided above is not exclusive, and the landowner is not bound to exhaust that remedy before resorting to a court of equity. 13 Lea, 669; 3 Lea, 480. Tenant for life or years must be compensated. 2 Head, 174-76. Tenant may sue for trespass for destroying his crops. 2 Head, 65.

**Limitation of proceedings by owner, and saving.**—The owners of land shall, in such cases, commence proceedings within twelve months after the land has actually been taken possession of, and the work of the proposed internal improvement begun; saving, however, to unknown owners and non-residents, twelve months after actual knowledge of such occupation, not exceeding three years; and saving to persons under the disabilities of infancy, coverture, and unsoundness of mind, twelve months after such disability is removed, but not exceeding ten years. Code Tenn. (M. & V.), § 1572 (1348); [Shannon's code Tenn., § 1867].

The land of persons under disability may be taken like that of other people. 3 Head, 63. The statute of limitation above is not unconstitutional. 12 Heis., 623-24. Party seeking to condemn entitled to open and close case. 4 Pick., 528. Abutting landowner without fee in street entitled to no pay, when. 3 Pick., 528-22-29. Deed to street goes to center, but to side of street, no further. 3 Pick., 522, 626-34. Horse

street railways in streets no additional burden. 3 Pick., 633; 4 Pick., 750. But steam railways, dummies, etc., are. 3 Pick., 632-33; 4 Pick., 750, 747; 6 Pick., 239. Commissioners may be appointed whether parties have made an unsuccessful effort to agree or not. 2 Head. 624-26.

**Right of way for geodetic survey.**—Any person employed under an act of Congress of the United States passed the tenth day of February, one thousand eight hundred and seven, and of the supplements thereto, or under the direction of Congress to form a geodetic connection between the Atlantic and Pacific coasts, and to furnish triangulation points for state surveys, may enter upon lands within this state for the purpose of exploring, triangulating, leveling, surveying, and of doing any other act which may be necessary to carry out the objects of said laws, and may erect any works, stations, buildings, and appendages requisite for that purpose, doing no unnecessary injury thereby. Code Tenn. (M. & V.), § 1573; acts 1877, ch. 24, sec. 1; [Shannon's code Tenn., § 1877].

**Damages.**—If the person over whose lands the survey has been made, or upon whose lands monuments, stations or buildings have been erected, or who has in any way sustained damage by such survey, cannot agree with the officer of the coast survey as to the damage sustained, the amount of such damage may be ascertained in the manner provided hereinbefore for the taking of private property for public uses. Code Tenn. (M. & V.), § 1574; acts 1877, ch. 24, sec. 2; [Shannon's code (Tenn.), § 1878.]

## ALABAMA ACTS AS TO EMINENT DOMAIN.

**Nature of railway's holding of right of way.**—[In Alabama.] By acts Ala. 1849-50, No. 123, 1890-91, p. 154, 1888-89, p. 443, and 1859-60, No. 216, the Nashville, Chattanooga & St. Louis Railway was authorized to build through Jackson, Madison, Marshall, and Etowah counties, with all the rights of Tennessee charter. See acts themselves herein on p. 55 to 61.

1. Under the state constitution of Alabama, 1875, it is provided that "no railroad, canal, or other transportation company, in existence at the



time of the ratification of this constitution, shall have the benefit of any future legislation by general or special laws, other than in execution of a trust created by law, or by contract, except on the condition of complete acceptance of all the provisions of article 14 of said constitution. Code, Ala., 1896, p. 103.

**Same. Easement acquired.**—A roadbed and right of way cleared and in use is in a different category from ordinary easements. It is exclusive, and unlike other easements will support ejectment. It is in the nature of realty. 75 Ala., 516. Ejectment will not lie, however, if road merely surveyed and located twenty-five years ago. 75 Ala., 516. The railroad company only acquires an easement in the land. The fee buildings, and everything not necessary to its use as a right of way, remains with the owner. 94 Ala., 488.

**Same. Trespassers may be ejected from right of way.**—The railroad, roadbed, and track are private property, along which no one has the right to travel except by permission of the owner. A person on the track not at a public crossing, may, on refusing to get off after warning, be removed by all the means the owner of a freehold can employ to eject an intruder. 62 Ala., 305.

**Width of right of way in absence of condemnation.**—If land is deeded to a railway company for a right of way and no mention is made therein as to its width the law presumes the statutory width was intended. 98 Ala., 647. See also 3 Lea (Tenn.), 478. If no deed or condemnation, then the entry and construction of the road would doubtless be considered as an appropriation of the statutory width. See 3 Lea (Tenn.), 478.

**Adverse possession of right of way.**—Where a railroad company locates its right of way over a strip of land, and, entering thereon, throws up embankments, prepares its roadbed through the entire tract, and exercises acts of ownership over it, it must be considered as acquiring thereby adverse possession of the strip for railroad purposes. 109 Ala., 377.

As to what constitutes abandonment of right of way, see 109 Ala., 448.

**Power to acquire property does not authorize purchase of competing steamship line.**—58 Ala., 241.

**Successive appropriation for right of way.**—The right of successive appropriation for right of way is recognized in Alabama. 87 Ala., 501. See also discussion of similar heading on Tennessee law herein, on p. 745 *et seq.* of this chapter.

**May condemn for branch roads, when.**—See pp. 639 and 640 herein.

**Right of other roads to condemn right of way, depot facilities, yards, etc., of Nashville, Chattanooga & St. Louis Railway.**—In Alabama railroads chartered under the general laws may condemn right of way of other roads, but not their road-bed. 82 Ala., 297; 87 Ala., 501–20. See also discussion of similar heading under Tennessee law in this chapter, p. 756 herein.

**May condemn intersection, connection, and crossing of other railroads.**—See section 21, of article XIV., of Alabama state constitution, p. 102 of code Ala. 1896. See also “Crossings” herein, on pp. 710–714. See also §§ 1165, 2445, code Ala., 1896.

**Cities may authorize railroads to build tracks across or through streets and alleys.** 116 Ala., 51.

**Railroads of Alabama are public highways.**—See § 3459, code Ala. 1896.

**Forfeiture of franchise by nonuser.**—Railroad corporations organized under chapter 28, of article VI., of the code of Alabama, 1896, forfeit their franchises and cease to exist by non-user of their franchises for five consecutive years.

**Right of telegraph companies to erect lines along railroad right of way.**—It is provided by the laws of Alabama that “any telegraph company, incorporated under the laws of this or any other state, shall have the right to construct, maintain, and operate lines of telegraph along any of the railroads or other public highways in this state; but such lines of telegraph shall be so constructed and maintained as not to obstruct or hinder the usual travel on such railroad or other highway.” Code Ala. 1896, § 1244.

## HOW LAND CONDEMNED IN ALABAMA.

### Application to court of probate for order of condemnation.

—Any corporation organized under the laws of this state, or any person, or association of persons, proposing to take lands, or to acquire an interest, or easement therein, for any uses for which private property may be taken, may, if there be no other mode of proceeding prescribed by law, apply to the court of probate of the county in which such lands, or a material portion thereof, may be situate, for an order of condemnation thereof to such uses. Code Ala., 1896, § 1712.

1. The question of the power of an applicant to condemn is one of law, and for the court. *London v. Sample Lumber Co.*, 91 Ala., 606. Probate court has jurisdiction of an application made by a railroad organized under the general law, to condemn for right of way a part of the right of way of another road, but not of the road-bed. *A. & C. R. Co. v. J. & A. R. Co.*, 82 Ala., 297; *M. & G. R. Co. v. A. M. Ry. Co.*, 87 Ala., 501; *M. & G. R. Co. v. A. M. Ry. Co.*, 87 Ala., 520. But not of a like application by a street railway without special statutory authority. *L. & N. R. Co. v. People's S. R. & I. Co.*, 101 Ala., 331. A railroad is not bound to adhere to a condemned right of way, but may proceed to further condemnation. *Cooper v. A. & A. R. Co.*, 85 Ala., 106. On appeal, the application may be amended in the circuit court so as to include more land than originally asked. *Newton v. A. M. Ry. Co.*, 99 Ala., 468. A corporation entering on lands without the consent of the owner, and without proceedings for condemnation, is a trespasser. *N. O. & S. R. Co. v. Jones*, 68 Ala., 48; 8 C., 70 Ala., 227. Having acquired possession by trespass, and improved the property, the corporation may still institute proceedings for its condemnation. *Jones v. N. O. & S. R. Co.*, 70 Ala., 227.

2. **Right to condemn on purchased road.**—The N., C. & St. L. Ry. has purchased several roads in Alabama, together with their rights, powers, privileges, and franchises. In such cases, the power of the N., C. & St. L. Ry. to condemn on the line of such roads would depend also upon the law of its organization. In other words, as to the line of such roads, the N., C. & St. L. Ry. would be vested with all the powers and privileges, and subject to all the duties and liabilities, of said original company. If the road so purchased had any particular rights in this regard, then the N., C. & St. L. Ry. would also possess them on this line. 15 Lea (Tenn.), 37; 112 U. S., 610; see also, case of *Rogers v. N., C. & St. L. Ry.*, decided, November 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which case has not yet been reported. The charter would not control absolutely, for, though a statute prescribes a mode by which land may be condemned, if thereafter the legislature, by general act, prescribes a different mode, the company must



proceed in the mode prescribed by the latter act. Such a statute does not impair vested rights, but merely affects remedies. *Thompson on Corp.*, sec. 5407; 81 Ky., 221; 12 Heis. (Tenn.), 54; 85 Ky., 270; 47 N. J. L., 59; 54 Am. Rep., 114; *Thompson on Corp.*, sec. 5437.

**Application and contents.**—The application must be in writing, verified by the oath of the applicant, or by the oath of an agent or attorney, and accompanied with security for the costs, and must state with certainty the name and residence of the applicant, the uses or purposes for which the land is to be taken, or the interest or easement therein to be acquired, and must state the name and residence of the owner, if known, or, if unknown, must show that reasonable diligence has been used to ascertain the same. Code Ala., 1896, § 1713.

The application must describe the lands sought to be taken with sufficient precision to enable a skillful person to locate it. *Brown v. R. & D. R. Co.*, 86 Ala., 206; *London v. Sample Lumber Co.*, 91 Ala., 606. Application may be amended on appeal to the circuit court so as to include more land. *Newton v. A. M. Ry. Co.*, 99 Ala., 468. A second application may be filed to condemn another right of way, although one has already been awarded applicant. *Cooper v. A. & A. R. Co.*, 85 Ala., 106. If payment be not made of the assessed damages within six months, applicant may file a second application to condemn the same lands. *A. M. Ry. Co. v. Newton*, 94 Ala., 443.

**Order of court on filing applications; notice.**—On the filing of the application the court must make and enter an order appointing a day for the hearing thereof, and if the owner of the lands resides in the state, must issue to him notice of the application, and of the day for the hearing thereof, which must be served by the sheriff, or other legal officer, at least ten days before the day appointed for the hearing; if the owner be unknown, or if he resides without the state, notice must be given by advertisement in some newspaper published in the county, or if there be no newspaper published in the county, by posting notice at the courthouse door, and three other public places, for at least three weeks before the day appointed for the hearing. If the owner be an infant, or be of unsound mind, notice must be served on his guardian, if any he have, resident in the state; but if he resides in the state, and has no such guardian, then upon the person who may have him in charge, or with

whom he may reside; if the owner be dead, and the lands are in the possession or under the control of his personal representative, notice must be served on such representative, and on the heirs at law of the decedent. Code Ala., 1896, § 1714.

Married women clause stricken out by joint committee.

**Infants; persons of unsound mind.**—If the owner of the lands be an infant, or is of unsound mind, the court, on the day appointed for the hearing, must appoint a guardian *ad litem* to represent him, and the guardian so appointed must file a written acceptance of the appointment, must appear and protect the rights and interests of such infant, or person of unsound mind; and, if he deems it necessary, may employ counsel to assist him; the compensation of such guardian and of his counsel must be ascertained by the court and taxed as costs of the proceeding. Code Ala., 1896; § 1715.

Damages should not be paid over to the guardian *ad litem*. *Brown v. R. & D. R. Co.*, 86 Ala., 206.

**Owner not appearing.**—If the owner does not appear on the hearing of the application, the court must hear the same, and if the application be granted, must appoint commissioners as herein provided for, and thereafter the same proceedings shall be had as if such owner had appeared. Code Ala., 1896; § 1716.

**Allegations, objections and proof to be heard; appeal.**—On the day appointed, or any other day to which the hearing may be continued, the court must hear the allegations of the application, and any objections which may be filed to the granting thereof, and any legal evidence touching the same, and shall make an order granting or refusing the application. The hearing herein provided for must in all respects be conducted and evidence taken as in civil cases at law, and either party may, by bill of exception, reserve any opinion or decision of the court as in cases in which bills of exception are allowed in civil cases at law; and either party is entitled to an appeal to the supreme court from the order of the court granting or refusing the application within thirty days from the making thereof. Code Ala., 1896; § 1717.

See citations to section 1720.

**If application granted ; commissioners appointed ; damages assessed.**—If the application be granted, the judge of probate must appoint three citizens of the county in which the lands sought to be condemned are situated, who shall possess the qualifications of jurors, who shall be disinterested, and who shall be required to file a certificate along with their ward that neither of them have ever been consulted, advised with or approached by any person in reference to the value of the lands, or the proceedings to condemn the same, prior to the assessment of damages, and that they knew nothing of the same before their appointment ; and the judge of probate is authorized to fill any vacancy occasioned by death, resignation, failure to act, or any disqualification of any of such commissioners from interest, prior knowledge of the subject-matter, or by being consulted, advised with or approached in reference to the condemnation of such lands prior to appointment, or to the assessment of damages. When the court shall have appointed the commissioners as herein provided, it shall at once issue notice of such appointment to the sheriff, whose duty it shall be to serve such notice upon the person therein designated within five days of the receipt thereof, and the sheriff shall receive the same compensation for serving such notice as allowed for summoning jurors. It shall be the duty of the commissioners, or a majority of them thus appointed by the judge of probate, to assess the damages and compensation to which the owner of the lands is entitled, and they shall be sworn as jurors are sworn. The commissioners may view the lands to be subjected, and must receive all legal evidence that may be offered by either party touching the amount of the damages the owner of the lands will sustain and the amount of compensation he is entitled to receive ; but the amount of compensation to which the owner is entitled must not be reduced or diminished because of any incidental benefits which may accrue to him, or to his remaining lands in consequence of the uses to which the land proposed to be taken, or in which an easement is proposed to be acquired, will be appropriated. But nothing in this section shall be construed to prevent any applicant for the condemnation of land,



or any landowner whose land is sought to be condemned, from being present in person, or by attorney, at any of the proceedings or trials provided for in this article. Code Ala. 1896, § 1718.

Commissioners are regarded as an inferior statutory tribunal. *M. S. Ry. Co. v. Sayre*, 72 Ala., 443. The owner of adjoining property injured by the construction of a railroad embankment on its right of way is entitled to damages, but this right does not pass to the vendee. *Evans v. S. & W. Ry. Co.*, 90 Ala., 54. The measure of damages is the value of the land at the time of the actual taking, and the diminution in value of contiguous lands. *Hooper v. S. & M. R. Co.*, 69 Ala., 529; *Jones v. N. O. & S. R. Co.*, 70 Ala., 227. And this when the land was taken by a trespasser who had erected valuable improvements. *N. O. & S. R. Co. v. Jones*, 68 Ala., 48; s.c., 70 Ala., 227. The value at which the owner assesses the land for taxation is admissible as evidence of value, but is not conclusive. *Birmingham Min. R. Co. v. Smith*, 89 Ala., 305. See also citations to constitution, article 14, sec. 7.

**Report of the commissioners.**—The commissioners must, within ten days from their appointment, report in writing to the court the amount of the damages and compensation ascertained and assessed by them, and, thereupon, the court must order the same to be recorded, and must make an order of condemnation in pursuance thereof upon payment of the damages and compensation so assessed and reported, or the deposit of the same in court. Code Ala. 1896, sec. 1719.

1. The words "or the deposit" inserted by joint committee.
2. Irregular, unauthorized, and void order. 91 Ala., 606.

**Appeal from assessment of damages.**—Either party may appeal from the assessment of damages and compensation by the commissioners to the city or circuit court of the county within thirty days after the making of the order of condemnation upon the report of the commissioners, by filing in the court rendering the judgment a written notice of appeal, a copy of which shall be served on the opposite party, and on such appeal the trial shall be *de novo*; but no appeal shall suspend the judgment if the applicant shall give bond, with good and sufficient surety, to be approved by the judge of probate, to pay such judgment as shall be rendered on appeal. Code Ala. 1896, § 1720.

An appeal and trial by jury of twelve must be secured; appeal under

this section must be taken from probate to city or circuit court. *Montgomery S. Ry. v. Sayre*, 72 Ala., 443; *Woodard I. Co. v. Cabaniss*, 87 Ala., 328; *Postal T. C. Co. v. A. G. S. R. Co.*, 92 Ala., 331; *A. M. Ry. Co. v. Newton*, 94 Ala., 443; *M. & C. R. Co. v. B. S. & T. R. Ry. Co.*, 96 Ala., 571; *L. & N. R. Co. v. Peoples' S. Ry. & I. Co.*, 101 Ala., 331; *M. & C. R. Co. v. Hopkins*, 108 Ala., 159. See also citations to constitution, article 14, sec. 7.

**Order of condemnation; effect of appeal.**—The order of condemnation upon the payment of the sum ascertained and assessed by the verdict of the jury, or the deposit thereof in court for the defendant, shall vest in the applicant the easement proposed to be acquired for the uses and purposes stated in the application, and for no other uses or purposes. But, if an appeal shall be taken by either party, then the person, corporation, or association seeking to acquire such right of way, upon the deposit in the court, for the party whose land is sought to be condemned, of the amount of damages and compensation so assessed, together with the costs of the proceeding, shall be entitled to enter upon the land so condemned, and survey, construct, and operate on the same for the uses and purposes stated in the application; but such easement shall not vest absolutely in such person, corporation, or association until the final determination of the cause and the payment or deposit in court of such damages and compensation as shall then be adjudged. Code Ala. 1896, § 1721.

In the order of condemnation the same certainty of description is required as in the conveyance. *London v. Sample Lumber Co.*, 91 Ala., 606. The payment of compensation before the taking is complete is a condition precedent, without which the title of the owner is not disturbed. *N. O. & S. R. Co. v. Jones*, 68 Ala., 48, s c. 70 Ala., 227; *M. & S. Ry. Co. v. Sayre*, 72 Ala., 443; *Faust v. Mayor*, 83 Ala., 279; *A. M. Ry. Co. v. Newton*, 94 Ala., 443. Until payment is made, the applicant has the right to discontinue proceedings. *A. M. Ry. Co. v. Newton*, 94 Ala., 443. The applicant only acquires an easement in the lands; the fee, buildings, and everything not necessary to its use as a right of way remains with the owner. *Odum v. R. & J. R. Co.*, 94 Ala., 488. If the required deposit is made, an appeal in no wise hinders or impedes work on the premises. *Cooper v. A. & A. R. Co.*, 85 Ala., 106; *M. & G. R. Co. v. A. M. Ry. Co.*, 87 Ala., 520. See also citations to constitution, art. I., sec. 24; art. XIV., sec. 7.

**Time within which damages to be paid; effect of failure to pay.**—The applicant may pay the damages and compensation

assessed at any time within six months after the assessment thereof, or, in case an appeal is taken, within six months after the appeal is determined; but if he fails to pay the same within such time, such assessment shall cease to be binding on the owner of the lands, and the rights of the applicant thereunder shall determine; and upon such failure, the applicant shall be liable to the owner for all damages the latter may have sustained by the institution of such proceedings, including a reasonable attorney's fee for defending the same. Code Ala. 1896, § 1722.

A judgment of condemnation cannot be pleaded as *res adjudicata* until paid; extent of conclusiveness before payment. *Am. Ry. Co. v. Newton*, 94 Ala., 443. Methods of enforcing payments of damages and compensation. *Cooper v. A. & A. R. Co.*, 85 Ala., 106. Compensation and damages should not be paid to the guardian *ad litem* of an infant. *Brown v. R. & D. R. Co.*, 86 Ala., 206. See also citations to preceding section.

**Foreign telegraph and telephone company.**—A telegraph or telephone company, incorporated under the laws of another state, proposing to extend connecting lines into this state, may acquire an easement for the uses and purposes of such connecting lines, and may pursue the mode of proceedings prescribed in this article. Code Ala. 1896, § 1723.

**Railroad crossings.**—Any corporation, person, or association of persons owning a railroad or street railroad in this state, and proposing to cross or intersect the line of another railroad or street railroad, may acquire an easement for such purpose, and to that end may pursue the mode of proceeding prescribed in this article. Code Ala. 1896, § 1724.

The crossing is a taking, and compensation must be made, as in other cases. *M. & F. R. Co. v. B. S. & T. Ry. Co.*, 96 Ala., 571. See citations to sec. 1712, and to constitution, art. 14, sec. 21.

**Costs.**—The cost of the application and proceedings thereunder, including the compensation of commissioners, who shall receive the pay of jurors, must be adjudged against the applicant and his surety for costs, for which execution may be issued. But should the applicant tender to the landowner, prior to the application for condemnation, a sum of money in



excess of the award of the commissioners, then the costs of the proceedings before the commissioners shall be against the landowner; but the commissioners shall have no knowledge of the amount so tendered, and must certify in their award that they had no knowledge of such tender. The principles of law and rules of justice relative to tender shall apply to all tenders made under the provisions of this section. Code Ala., 1896; § 1725.

**Court of probate open at all times.**—The court of probate must be deemed always open for the filing and trial of all applications made under this article. Code Ala., 1896; § 1726.

### GEORGIA ACTS AS TO EMINENT DOMAIN.

**Nature of railways holding of right of way.**—[In Georgia.] By acts Ga., 1847–8, p. 172, the Nashville, Chattanooga & St. Louis Railway was granted all the rights, privileges, and immunities in Dade County, Georgia, as it possessed under its Tennessee charter, and also rights of Hiawassee Railroad Co. See p. 62, herein.

The dominion of a railroad corporation over its tracks, trains, and right of way is no less complete or exclusive than that which every owner has over his own property. Hence the corporation may exclude or admit whom it pleases when they come to transact their own private business with passengers or other persons. This applies to selling lunches to or soliciting orders from passengers, and a mere implied license, no matter how long enjoyed, to transact such business, for which no compensation has been paid, is revocable at any time. 81 Ga., 461. See, also, similar heading under Tennessee law, in this chapter, p. 742, herein.

**Same. Easement only acquired.**—By § 4683 of the Code Georgia, 1895, which is set out further on in this chapter, the interest acquired by the railroad company in its condemned right of way is only an easement.

**Same. Injunction will lie to prevent others from building on right of way.**—It has been held in Georgia that where a railroad company acquires a right of way, an injunction

would lie to prevent an adjoining landowner from erecting a flouring mill within seven or eight feet of the track, which would thus leave no sufficient room for the repair and construction of the same. 27 Ga., 499.

**Statute of limitations runs against right of way ; when.**—It has been held in Georgia that “although the charter of a railroad company authorized it to acquire such strips of land between its terminal points as it might deem necessary, the width of the right of way not being stated, yet when the road was located along and near the land now in dispute, and for thirty years the company did not take or use it, but it remained in the possession of others who claimed title to it, this was conclusive that it was not deemed necessary by the company for the successful operation of the road, and was not, therefore, a part of its right of way under its charter, no conveyance to the company or condemnation of the land appearing.” 76 Ga., 749.

1. If the width of right of way is specified in the charter, it is probable that the entry and construction of the road would be regarded as an appropriation of the statutory width. See 3 Lea (Tenn.), 478; 98 Ala., 647.

2. See discussion in first part of this chapter on similar heading under Tennessee law, p. 739, *et seq.*, herein.

**Misuser of franchises may work dissolution.** 100 Ga., 147.

**Right of cities to open streets across railroad tracks ; depot grounds, etc.**—In order to authorize a municipal corporation in Georgia to take for the purpose of opening or extending streets, property already devoted to public use, the power must be conferred in express terms, or by necessary implication. A general power conferred by legislative enactment “to open new streets, change, widen, or to extend streets already opened within the corporate limits,” does not expressly, or by implication, confer upon the city the authority to take and use for this purpose land already in use by a railroad company for purposes embraced within the provisions of its charter. 98 Ga., 161.

**Where street opened across track, railroad not prevented from laying additional tracks at crossing.**—It has been decided in Georgia that, “where the dedication of so much of a

public street as crosses an existing track and the right of way of a railroad company, has resulted by implication from the laying out of the street at that point by the municipal authorities, and its use by the public acquiesced in by the railroad company, the company is not thereby precluded from constructing and using for the passage of its locomotives and cars, when essential to the convenient transaction of its business, an additional track upon such street, within the limits of the right of way owned by it at the time of the dedication, if the track is so constructed and used as not to interfere more with the use of the street by the public than is ordinary and usual at street and railway intersections where the whole breadth of the right of way is occupied with tracks for the passage of locomotives and cars. 91 Ga., 573.

**Successive appropriation or condemnation, for right of way.**—For a discussion generally of this subject, see similar heading under Tennessee law, p. 745 herein.

**May condemn connecting switches with other roads, and vice versa.**—See § 2215 of code Ga. 1895; also § 2167(6) of same code.

**May condemn land for branch roads.**—See p. 640 *et seq.* herein.

**Right of other roads to condemn right of way of this.**—  
“In the event any company does not procure from the owner or owners thereof, by contract, lease, or purchase, the title to the lands or right of way or other property necessary or proper for the construction or connection of said railroad and its branches or extensions, or its depots, wharves, docks, or other necessary terminal facilities, necessary or proper for it to reach its freight or passenger depot in any city, town, or village in the state, as hereinafter provided, said corporation may construct its railroad over any lands belonging to other persons, or over such right of way or tracks of other railroads, as aforesaid, upon paying or tendering to the owner thereof, or to his or her or its legally authorized representative, just and reasonable compensation for said lands or said right of way. When the compensation is not otherwise agreed upon, it shall



be assessed and determined in the manner provided in this code." Code Ga. 1895, § 2170. See also discussion herein of Tennessee law on subject, p. 756.

**Same. Right of other roads to condemn joint use of tracks, terminal facilities, etc., of Nashville, Chattanooga & St. Louis Railway.**—Under the general incorporation laws of the state of Georgia railroads are authorized "to cross, intersect, or join or unite its railroads with any railroad heretofore or hereafter to be constructed, at any point in its route, or upon the ground of any other railroad company, with the necessary turnouts, sidings, and switches, and other conveniences necessary in the construction of said road, and may run over any part of any railroad's right of way necessary or proper to reach its freight depot, in any city, town, or village through or near which said railroad may run, under the limitations hereinafter named; but in crossing another railroad, either over, under, at grade, level or otherwise, it shall be at the expense of the company making the crossing, and in such way and manner, at the time of construction, as not to interfere with said railroad in its regular travel or business. Code Ga. 1895, § 2167 (6).

Railways in Georgia may also contract as to joint use of right of way, or tracks, when. See code Ga. 1895, § 1865.

**Width of right of way.**—The width of the right of way granted railroads chartered under the general laws of Georgia is 200 feet. Code Ga. 1895, § 2167 (4).

Railroads chartered under the general laws may take land outside of its 200 foot right of way for obtaining sand, etc. 97 Ga., 107.

**Right of eminent domain; police powers.**—"The exercise of right of eminent domain shall never be abridged, nor so construed as to prevent the general assembly from taking the property and franchises of incorporated companies and subjecting them to public use, the same as property of individuals, and the exercise of the police power of the state shall never be abridged nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well-being of the

state." Constitution, article 4, sec. 2, par. 2. See also code Ga. 1895, § 5798.

**Privileges granted to railroad companies already incorporated.**—Any railroad company that has been already incorporated, whether by act of the general assembly incorporating the same by name or under the provisions of the general railroad law of the state, and whether organized or not, is hereby declared to be a legal and subsisting corporation under the laws of Georgia, and may amend its charter either by adopting the provisions of this article or by extending the time of expiration of its original charter for a period of fifty years, and when it so amends its charter it may retain its original organization and the same amount of capital stock provided for in its original charter, and any other powers and privileges, except exemption from taxation, granted in its original charter, which may not be in conflict with this article or any other act relating to the powers and duties of railroad companies, and such amendments shall be without prejudice to any of its prior rights or contracts; and the provisions of this article may also be adopted by any person or persons, now owning or operating a railroad in this State, without prejudice to such organization as they may have already affected, and without prejudice to their existing contracts and obligations. Whenever any railroad company desires to amend its charter, or any person or persons desire to adopt the provisions of this article, as above provided, it or they shall file a petition with the secretary of state, setting forth particularly in what manner it is desired to amend or adopt the provisions of this article. When such petition is filed, the secretary of state shall issue to said company or persons, under the great seal of the state, a certificate setting forth the manner in which said charter is amended, if the petition was for amendment, or, if the petition was to adopt the provisions of this article, then a certificate setting forth that said persons are a body corporate, with all the powers, duties, and liabilities of this article. Before said certificate shall issue, said petitioner or petitioners shall pay to the treasurer of the state the sum of fifty dollars. Code Ga. 1895, § 2178.

**Right of telegraph companies to occupy right of way of railroads.**—"Any person or any duly incorporated telegraph company having the right to do business in this state shall have the right to construct, erect, and maintain upon the right of way of the several railroad companies in this state, and along the lines thereof, their posts, fixtures, and wires, and to operate the same." Code Ga., 1895, § 2345.

1. A contract between a railroad and telegraph company, vesting in the latter company exclusive right to use former's right of way for telegraph purposes, is void as against public policy. 65 Ga., 160.

2. For method of assessing damages for, see § 4685 of code of Ga. 1895, which is fully set out further on in this chapter, with notes; also acts Ga. 1898, No. 135, p. 288.

3. For amendment to the law in this regard, see acts Ga., approved Dec. 21, 1897, and acts Ga., 1898, No. 135, p. 280.

**Same. Duties of telegraph company.**—Said fixtures, posts, and wires shall be erected at such distances from the tracks of said railroads as will prevent any and all damages to said railroad companies by the falling of said fixtures, posts, or wires upon said railroad tracks, and such telegraph companies shall be liable to said railroad companies for all damages resulting from a failure to comply with the provisions of this section. Code Ga., 1895, § 2346.

For notice necessary to be given by telegraph company to railroad company, where it proposes to condemn property of, see acts Ga. 1898, No. 135, p. 280.

**Laws apply to Western & Atlantic Railroad.**—"All laws of force regulating the liability of railroad companies in this state for damages done by the running of locomotives, cars, and other machinery, are hereby declared to apply equally to the Western & Atlantic Railroad, and in the bringing of all suits against the Western & Atlantic Railroad, the same shall be regulated by the laws in existence on that subject at the time of the adoption of this code." Code Ga. 1895, § 1023.

Where the damage for which the suit was brought was received before the adoption of the code, see 40 Ga., 416. What action maintainable under this section by the widow of an engineer killed by the colliding of two trains, see 34 Ga. 422.

**Same. Road laws also apply to Western & Atlantic Railroad.**—"All the public road laws and penal laws touching the



railroads of this state, whether to obligate or protect, apply to the state road, unless specially excepted, or some other provision is prescribed in lieu of some one or more thereof." Code Ga. 1895, § 1022, vol. 1.

The acts of 1856 (Cobb. 154) do not apply to the Western & Atlantic Railroad. 23 Ga., 436. It is subject to the same liabilities for damages, however, as other roads. 34 Ga., 424. See also 53 Ga., 124.

## HOW LAND CONDEMNED IN GEORGIA.

**Condemnation of private property; notice, and to whom given; taking private property.**—All corporations or persons authorized to take or damage private property for public purposes shall proceed as herein set forth. Code Ga., 1895, § 4657.

1. **Condemnation on purchased road.**—Where the railroad rights, powers, privileges, and franchises of a domestic corporation of Georgia are purchased, then, in determining the power to condemn on such a line, regard must be had to the law of its organization as well as to the general laws of the state. In other words, as to the line of such a road, the N., C. & St. L. Ry. would be vested with all the powers and privileges, and subject to all the duties and liabilities, of said corporation whose road was purchased. 15 Lea (Tenn.). 37; 112 U. S., 610; see, also, case of *Rogers v. N., C. & St. L. Ry.*, decided November 9. 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which opinion has not yet been reported. Though the charter must be looked to, yet it will not always control in condemning, for, where a statute prescribes a mode by which land may be condemned to the use of chartered railways, and thereafter the legislature, by general act, prescribes a different mode, the company must proceed in the mode prescribed by the latter act. Such a statute does not impair vested rights, but merely affects remedies. Thompson on Corp., sec. 5407; 81 Ky., 221; 12 Heis. (Tenn.), 54.

**Payment or tender of compensation.**—If said corporations or persons cannot by contract procure the land, easement, right of way, waterway, franchise, or other interest or property useful, needful, and necessary for public purposes, and authorized by law to be taken or damaged, then it shall be lawful for said corporation or person to take or damage said property, upon paying or tendering to the owner thereof just and adequate compensation for the land, franchise, or other interest or property so to be taken or used. Code Ga. 1895, § 4658.

**When parties cannot agree as to compensation.**—If the parties cannot agree upon the compensation to be paid, the same shall be assessed and determined in the following manner. Code Ga. 1895, § 4659.

**Notice to owner.**—The corporation or person seeking to condemn property for public purposes shall serve a notice upon the owner of the property and upon the owner of any remainder, reversion, mortgage, lease, security-deed, or other interest therein. Code Ga. 1895, § 4660.

For what notice is necessary, see 96 Ga., 680.

**Notice if owner under disability.**—If the owner, or any of the owners, shall be a minor or under any disability whatsoever, such notice shall be served upon his or their personal representatives. Code Ga. 1895, § 4661.

**If there be no personal representative.**—If there be no personal representative, such notice shall be served personally upon the minor and upon the ordinary of the county where the property is located, who shall appoint a guardian *ad litem* to represent the minor in said litigation. Code Ga. 1895, § 4662.

**Guardian ad litem for minor.**—If such ordinary, by reason of interest or other cause, is disqualified, such notice shall be served upon the clerk of the superior court of the county, who shall appoint a guardian *ad litem* to represent the minor. Code Ga. 1895, § 4663.

**Notice where trust property.**—If the property sought to be condemned is trust property, or property in which remainders have been created, such notice shall be served upon the trustee, and also upon such persons as have an interest under the conveyance and who are of age. Code Ga. 1895, § 4664.

**Service of notice on nonresidents.**—If the owner, or any of the owners, or persons in any way interested in the property, reside out of the state, notice shall be served upon the person in possession, and a like notice shall be inclosed in an envelope, properly stamped and directed, and be by the said corporation or person delivered to the ordinary of the county, who shall mail the same to said owner, or owners, at their address, if known, and if the address be not known, the ordinary shall act

for such nonresident owners in the manner herein provided for unrepresented minors. An entry of the facts and his action therein shall be entered on the minutes by the ordinary. Code Ga. 1895, § 4665.

**Where owner unknown, or possibility of unborn remainder-men.**—If the owner or owners of such property, or of any interest therein, are unknown, or there is possibility of unborn remainder-men having an interest, notice shall be served upon the person in actual possession of the property, and also upon the ordinary, who shall act for said unknown owner as provided for in case of minors; *Provided, however,* That when the unknown owner may appear he may ask for and have another assessment under the terms of this chapter, and he shall receive the amount then assessed; and in the event the second assessment is less than the first, the ordinary shall return the overplus to the corporation or person originally condemning. Code Ga. 1895, § 4666.

**How service effected.**—Unless service is acknowledged or waived, a copy of such notice shall be served by a sheriff or deputy, personally, or by leaving a copy at the residence of the owner, or mailed in case of nonresidents, at least fifteen days before the day fixed for assessing the damages. Code Ga. 1895, § 4667.

**Where notice cannot be served.**—In cases where service cannot be effected by leaving notice at place of residence, or by personal service, the notice shall be posted at the courthouse door fifteen days and be published once in the official paper one week before the day fixed for assessing the damages. Code Ga. 1895, § 4668.

**Direction and contents of notice.**—All notices shall be directed to the owner or owners, and shall describe the property or franchise and the amount of interest therein sought to be condemned; fix the time when the hearing will be had on the premises; give the name of the assessor selected by said corporation, and request the owner, trustee, or representative, as the case may be, to select an assessor. Code Ga. 1895, § 4669.



**Appointment of assessors; when assessor to be appointed by ordinary.**—If the corporation seeking such condemnation and assessment shall notify the ordinary that the owner or persons interested have failed to select an assessor, or that the owners fail to agree upon an assessor, or that the owner is unknown, or that the owner or any one of the owners is a minor or otherwise under disability and without legal representative, the ordinary of the county where the property is situated, or the franchise sought to be condemned is used, shall select an assessor for such persons or owners, and if such ordinary is disqualified, then the clerk of the superior court of the county shall make the selection, after like notice by such corporation. Code Ga. 1895, § 4670.

**Third assessor.**—The two assessors thus selected shall select a third assessor; but, if in five days they do not agree upon a third assessor, the judge of the superior court of the county, upon application of either party, of which the other shall have notice, shall make the selection in term-time or vacation. Code Ga. 1895, § 4671.

**Oath of assessor.**—The three assessors thus selected shall be sworn by some officer authorized to administer an oath “to do equal and exact justice between the parties according to law.” Code Ga. 1895, § 4672.

**Hearing before assessors; when hearing cannot be at time fixed.**—If, by reason of delay in appointing assessors, or other cause, the hearing cannot be had at the time fixed in the original notice, the assessors shall fix the time for the hearing and notify both parties, in writing, of the time and place of the hearing. Code Ga. 1895, § 4673.

**Evidence to be heard by assessors.**—The said assessors shall hear all evidence offered by either party as to the value of the property to be taken or used, or as to damages done the owners of the same, and the benefits to the owner accruing from the use of the property by the corporation or persons. Parties may be represented in person or by attorney before the assessors. Code Ga. 1895, § 4674.

**Assessment of value and damages.**—The assessors, or a majority of them, shall assess the value of the property taken or used, or damage done, and shall also assess the consequential damages to the property not taken, and deduct from such consequential damages the consequential benefits to be derived by the owner from the operation of its franchise by the corporation, or by the carrying on of the business of the corporation or person taking or damaging the property; *Provided*, The consequential benefits assessed shall in no case exceed the consequential damage assessed; *Provided, further*, That nothing in this section shall be so construed as to deprive the owner of the actual value of his property so taken or used. Code Ga. 1895, § 4675.

**Finding of assessors; how and where entered.**—Said assessors shall enter their finding on the notice substantially as follows: “Upon the application of A. B. to condemn the following property of C. D.—, notice was duly served by the sheriff (or his deputy) on C. D. (owner, trustee, representative, or ordinary, as the case may be), by (mailing, posting, etc., as the case may be). The applicant appointing E. F. as assessor. The (owner, ordinary, representative, as the case may be) appointed G. H. as assessor, and they two (or judge of the superior court) appointed I. J. as assessor; who, after being duly sworn and hearing the evidence, find and award that for taking the property sought to be condemned, to-wit: —, the said A. B. shall pay to C. D. as owner, the sum of \$——. The consequential damages to the property of C. D. not taken amount to \$——, and the consequential benefits to \$——; and the said A. B. shall pay said C. D. the difference between such damage and such benefit.” Code Ga. 1895, § 4676.

**Filing and record of award.**—Within ten days after the award is made, it shall be filed and recorded in the office of the clerk of the superior court of the county where the property is situated or franchise sought to be condemned is exercised. Code Ga. 1895, § 4677.

**Appeal, final judgment, etc.**—In case either party, or the representative of either party, is dissatisfied, he or they

have the right, within ten days from the time the award is filed, to enter in writing an appeal from the award to the superior court of the county where the award is filed; and, at the term succeeding the filing of the appeal, it shall be the duty of the judge to cause an issue to be made and tried by a jury as to the value of the property taken or the amount of damage done, with the same right to move for a new trial and file a bill of exceptions as in other cases of common law. Code Ga. 1895, § 4678.

**Appeal not to delay, when.**—The entering of said appeal and the proceedings thereon shall not hinder or delay in any way the corporation's or person's work or the progress thereof, if the applicant to condemn shall pay or tender to the owner the amount of the award, and, in case of the refusal of the owner to accept the same, deposit the amount awarded with the clerk of the superior court for the benefit of the owner. Code Ga. 1895, § 4679.

**Tender or acceptance not prevent appeal.**—The tender, payment, or acceptance of the amount shall not prevent either party from prosecuting the appeal. If the amount so awarded by the assessors is less than that found by the final judgment, the company shall be bound to pay the sum so finally adjudged in order to retain the property; and if it be less than that awarded by the assessors, the owner shall be bound to refund any excess paid to or received by him, and a judgment for such excess shall be rendered against him, to be collected by levy as in other cases. Code Ga. 1895, § 4680.

**When execution shall issue.**—If no appeal be entered within ten days after the award is filed, or if the corporation shall fail to pay the amount of the award or final judgment, the clerk shall issue execution upon such award or judgment, which may be levied upon any property of the corporation or person condemning. Code Ga. 1895, § 4681.

**Notice and award to be entered on minutes.**—In all cases the clerk shall enter the notice and award thereon upon the minutes of the court, and the corporation or person condemning shall pay the costs for the condemnation proceedings to



each assessor, not exceeding two dollars per day, and other cost as now provided by law in civil cases in the superior court. Code Ga. 1895, § 4682.

**What interest to vest in party seeking condemnation.**—Upon the payment by the corporation or person seeking to condemn of the amount of the award and final judgment on appeal, such corporation or person shall become vested with such interest in the property taken as may be necessary to enable the corporation or person taking to exercise their franchise or conduct their business; and whenever the corporation or person shall cease using the property taken for the purpose of conducting their business, said property shall revert to the person from whom taken, his heirs or assigns. Code Ga. 1895, § 4683.

**Payment to minor.**—If the person to whom the money belongs shall be a minor or under any disability, and without a legal representative entitled to receive the same, the money shall be paid to the ordinary of the county, who shall at once cause the same to be invested; and to this end the ordinary of the county of his residence shall appoint guardian or other proper representatives to receive said money and manage the property in which it may be invested. Code Ga. 1895, § 4684.

**To what condemnations applicable.**—The method of condemnation of property and assessment of damages hereinbefore provided shall apply to condemnation by cities, counties, railroads, telegraph, canal, mining, and waterworks companies, drainage by counties, tramroads, lighthouses, and beacon construction, and to all persons or corporations having the privilege of exercising the right of eminent domain; but nothing herein shall be construed to alter or repeal the law for opening public or private roads or ways. Code Ga. 1895, § 4685.

By Acts Ga. 1898, No. 135. p. 280, of combined acts of 1896-7-8, the above section was amended as to the method of assessing damages for condemnation by telegraph companies, and provided that only one assessment need be made for entire road which may be had in any one county where service can be made as therein provided, which, however, must be in county of principal office, if company has one in state. See act itself.

**Subpoena and attendance of witnesses.**—Said assessors shall have the same power to issue subpoenas and compel the attendance of witnesses as is vested in the superior court. Code Ga. 1895, § 4686.

## GENERAL NOTES TO GEORGIA ACTS.

**Railroad right of way.**—When summary way of assessing damages for right of way does not deprive landowner of common law remedy to recover damages: 1 Ga., 524–530. Right not complete till compensation: 19 Ga., 427. Appeal from award as to right of way in four days from decision: 9 Ga., 405; 18 Ga., 607–609; 30 Ga., 43. Other law as to the right of way: 14 Ga., 327. Injunction by railroad against encroachment on their right of way: 27 Ga., 499. The actual damages from invasion of property by railroad for right of way, the measure of: 45 Ga., 180. When right of way granted over land, not revocable: 45 Ga., 531. As to use of street by railroad: 43 Ga., 200. As to costs in proceeding for right of way: 47 Ga., 345. Where owner cannot be compelled to take pay for right of way in stock, burden of proof on the railroad company: 48 Ga., 44. As to injunction against railroad using water near right of way: 42 Ga., 509. When owner not debarred from resorting to trespass for right of way: 48 Ga., 423. Injunction sustained against city appropriating right of way of railroad for a street: 53 Ga., 120. As to when the benefits derived by the owner can be set off against the value of the land taken and against other damage: 30 Ga., 43; 51 Ga., 470; 53 Ga., 123. As to evidence of value of land taken and as to consequential damages: 53 Ga., 178. Adverse possession by railroad of right of way: 54 Ga., 293–296. Where no necessity to resort to injunction, adequate remedy by levy and sale or ejectment: 54 Ga. 579; but see 65 Ga., 614. Interest only given as part of damages for right of way from time damage occurred: 51 Ga., 471.

Legislature may prescribe mode of ascertaining what is just and adequate compensation: 83 Ga., 257.

Assessments cover all damages, foreseen or not, resulting from proper construction of road: 69 Ga., 396.

Amount of assessors' award paid or tendered, work may proceed. Phrase "from the time said condemnation proceedings are begun" (in section 1689 (1), Code of 1882) conflicts with constitution, in so far as it authorizes work done before payment of tender: 83 Ga., 263.

Compensation continuously and properly tendered is compensation "paid:" 83 Ga., 259; citing 69 Ga., 320.

Land along railroad track, in possession of party over fifteen years under color of title, could not constitute right of way: 76 Ga., 749.

Injunction proper remedy against purchaser of road sold by court pending assessment of damages: 65 Ga., 614.

Agreement of plaintiff's attorney not to enjoin railroad did not give right of entry without ascertaining value: 76 Ga., 90.

Constitutional inhibition against taking private property for public purposes without compensating, etc., not warrant injunction where company *bona fide* claims right of way: 77 Ga., 323.

Witness on appeal may be asked as to value, without restriction to cash market value: 71 Ga., 240.

Appeal vacates award; and where husband consented to certain valuation, but wife and minor children appealed, his act did not bind them: 71 Ga., 240.

Steam railroad company cannot lay tracks along city street without express sanction of state legislature: 80 Ga., 793.

By legislative grant to Georgia Southern & Florida Railroad Company of rights and privileges of Central Railroad authority was not conferred to lay tracks on streets of Macon: 80 Ga., 794.

As to railroad company's right to build additional tracks along right of way, on street dedicated to public: 91 Ga., 573.

Alley between road and lot condemned may be estimated in damages. In such case value of easement and one-half that of ground should be counted: 71 Ga., 240.



Railroad authorized with condition precedent, to use street, cannot until condition complied with: 84 Ga., 376.

Railroad purchasing right of way and taking away protecting fence, liable to tenant or grantor for damages by cattle: 84 Ga., 256.

Though railroad paid damages for right of way, liable for damage to crops, caused by subsequent removal of stock gap: 85 Ga., 444.

Liability of railroad company for construction of roadway whereby adjoining landowners injured; views from all stand-points and rules laid down: 69 Ga., 396.

County road, measure of damages for exercise of right of eminent domain is depreciation in market value of property: 85 Ga., 420.

## KENTUCKY ACTS AS TO EMINENT DOMAIN.

**Nature of railway's holding of right of way.**—[In Kentucky.] By acts Ky. 1856, the Tennessee charter of the Nashville & Northwestern Railroad Company, now the Northwestern Branch of the Nashville, Chattanooga & St. Louis Railway, was reenacted in Kentucky, and the company granted all the privileges, franchises, powers, and responsibilities conferred and granted by said Tennessee charter. See pp. 125-6 herein.

For charter provisions on this subject of the Hickman & Obion Railroad Company, which extended from Union City to Hickman, Ky., and which had been purchased by the Nashville & Northwestern Railroad Company prior to the purchase of the latter railroad by the Nashville, Chattanooga & St. Louis Railway, see p. 104 herein.

For charter provisions of Paducah, Tennessee & Alabama Railroad Company, see p. 487, *et seq.*

The provisions in charters prescribing a mode for condemning land were repealed by acts Ky. 1882, and a new mode enacted. 85 Ky., 270; 81 Ky., 221. For new mode, see further on in this chapter.

**Same. Easement only acquired.**—By § 839 of the code Ky. 1894, the character of title acquired by condemnation is only

an easement. See section itself, further on in this chapter. This easement ends when the purpose for which it was condemned no longer exists. 98 Ky., 67.

If the right of way from Union City to Hickman, Ky., had been condemned under section 23 of the charter of the Nashville & Northwestern Railroad Company, and the assessment paid, the company would have acquired a fee simple title to it. See pp. 91-2 herein. If no condemnation, then an easement. See p. 92 herein. The right of way, however, was acquired under the charter of the Hickman & Obion Railroad. See p. 104 herein.

**Adverse possession of right of way.**—Where one who purchased a farm over which a railroad company had previously purchased and had granted a right of way, entered, “in subjection to and friendship with the right of way,” the cultivation by him of the farm and the erection of an occasional line of fencing on or about the right of way did not tend to show an adverse holding. 98 Ky., 661. Even if the possession was adverse, and so contemplated for fifteen years, the adverse claimant, by knowingly permitting the railroad company which had paid his grantor for the strip of land and held the legal title, to re-enter and erect costly improvements, must be treated as having abandoned the adverse claim and cannot recover damages. 98 Ky., 661. Where one permits the construction of a railroad through his land without objection, he cannot recover the possession of the land taken, and this rule applies to a married woman; but he may recover damages if he proceeds in time. 96 Ky., 401. But see 92 Ky., 407.

**Presumption upon sale of right of way.**—If a person has sold to a railroad the right of way along his property, it must be assumed that he contemplated and assented to such use of the way as would render it practicable for the purpose for which it was intended, and he cannot complain, unless the company has failed to use proper care to avoid unnecessary injury. 7 R., 606. See, also, 99 Ky., 570.

**Condemnation cannot be limited by contract.**—One board of directors of a railroad company cannot bargain away its power of eminent domain, or curtail it in any way, so as to bind subsequent boards. 102 Mass., 19. Hence, where a land-

owner dedicated a right of way to a railroad company on condition that no greater width should ever be taken, it was held, that the railroad company was not estopped from condemning a broader strip when necessary. 87 Ky., 72; 113 Ill., 156; 102 Mass., 19. See, also, 5 Colo., 270; 11 Kan., 602; 6 Colo., 2; 64 Ill., 414; 71 Ill., 592; 45 Mo., 212; 18 Pick. (Mass.), 472; 5 Ore., 117.

**Constitution of Kentucky to be accepted before acquiring land.**—"No railroad corporation, organized or created by or under the laws of any other state, shall have the right to condemn land for, or acquire the right of way for, or purchase or hold land for its depots, tracks, or other purposes, until it shall have first filed in the office of the secretary of state of this state, in the manner provided in the first article of this chapter, its acceptance of the constitution of this state, and shall have become organized as a corporation under the laws of this state, which it may do by filing in the office of the secretary of state and the railroad commission articles of incorporation in the manner and form provided in section 763 of this article." Code Ky. 1894, § 765.

Under the above section, as well as §§ 570 and 841 of the Code of Kentucky (1894), the board of directors of the Nashville, Chattanooga & St. Louis Railway, on January 21, 1899, accepted the constitution of Kentucky, and filed a copy of said acceptance together with the charter of the company with the secretary of state and railroad commissioners, February 25, 1899. The charter was filed with the secretary, as well as the commissioners, several months before February 25, 1899, but the constitution of Kentucky had not been accepted by the board of directors at that time.

**Powers of railroads chartered under general acts as to acquiring right of way, lands, etc.**—Every company shall possess the following powers and be subject to the following liabilities and restrictions:

1. To cause such examinations and surveys for the proposed railroad to be made as may be necessary to the selection of the most advantageous route for such road, and, for such purposes, by its officers, agents, and servants, to enter upon lands or waters of any person, but subject to liability for all damages which they shall do thereto.



2. To receive, hold, enter upon, and take possession of such voluntary grants and donations of real and other property as shall be made to it, to aid in the construction and maintenance and operation of such road, but the real property thus received shall be held and used for the purpose of such grant or donation only.

3. To purchase, hold, enter upon, take possession of and use such real estate, franchise, and other property as may be necessary for the construction, maintenance, and accommodation of its line of road; but the same shall not be taken or appropriated without the consent of the owner until the compensation to be made thereof is agreed upon or ascertained, and paid or deposited as required by law. Code Ky. 1494, § 768.

4. **Same. Width of right of way; may take land for what; change gauge; may change location, when.**—To lay out its road not exceeding one hundred feet in width, and if more than one track is laid, fifty feet additional for each track, and construct the same; and for the purpose of cuttings or embankments, and procuring stone, gravel or other material, or for the purpose of draining its roadbed, to take, in the manner herein provided, such other lands in the vicinity of or adjacent to its road as may be necessary for the proper construction, operation, and security of its road; and to change, when it deems proper, the gauge of its road; and may, for the purpose of avoiding annoyance to public travel, or dangerous or difficult grades or curves, or unsafe, insecure grounds or foundations, or for other reasonable cause, change the location, or grade of any portion of its road, but shall not, except as otherwise provided, depart from the general route prescribed in the articles of incorporation. Code Ky. 1894, § 768 (4).

5. **Right of other roads to cross this; conditions.**—To construct its road upon or across any water course, private or plank road, highway, street, lane or alley, and across any railroad or canal; but the corporation shall restore the water course, private or plank road, highway, street, lane, alley, railroad or canal to its former condition, as near as may be,

and shall not obstruct the navigation of any stream or obstruct any public highway or street by cars or trains for more than five minutes at any one time, and shall construct suitable road and street crossings for the passage of teams by putting down planks or other suitable material between and on each side of the rails, the top of which shall be at least as high as the top of the rails of such road or street; and in case the road is constructed upon any public street or alley, the same shall be upon such terms and conditions as shall be agreed upon between the corporation and the authorities of any city in which the same may be, but such road shall not be constructed upon any public street or alley until compensation shall be made by the corporation therefor to the owner of the property adjoining such street or alley, and opposite where such road is to be constructed, either by agreement or in the manner provided by law. Code Ky. 1894, § 768 (5).

**Same. Map of route to be recorded; commission to be notified if other railroad crossed.**—Every corporation proceeding to construct its road in or through any county shall file and have recorded, at its expense, in the county clerk's office of such county, a map of the route, showing the center of said proposed road, and the width thereof; and if, after a road is located, it is desired to change its location, or the proposed route is changed, as it may be, a map showing such change, as well as the center and width thereof, shall be filed and recorded, at its expense, in the county clerk's office of the county in which the change is made. If the proposed route, as indicated by the map, crosses the line of any other railroad, notice of such fact shall, before the construction of the road is commenced near the point of crossing, be given to the railroad commission, who shall give notice to the corporation whose road it is proposed to cross, as well as the other corporation, of the time and place it will meet to consider the question of approving the crossing, if objection be made thereto; and the commission may determine the manner in which the crossing shall be made to protect against accidents thereat. Code Ky. 1894, § 767.

**Right of telegraph companies to condemn right of way along railroad.**—By acts Ky. 1898, ch. 49, p. 123, telegraph companies were empowered to construct, maintain and operate their lines along and upon the right of way and structures of any railroad in the state, upon terms therein set out.

**Successive appropriation or condemnation for right of way.**—For a full discussion of this subject, see similar heading under Tennessee law, p. 745, *et seq.*, herein.

In absence of restrictions in charter or general law, a railroad company may make successive appropriations for a right of way, even in face of contract not to do so, as a corporation cannot bargain away its power of eminent domain. 87 Ky., 72; 9 R., 924.

**Railroads may condemn for branches, switches, spurs, etc.**—See p. 641 herein.

## HOW LAND CONDEMNED IN KENTUCKY.

**Commissioners; appointment to assess damages.**—When any company authorized to construct a railroad shall be unable to contract with the owner of any land or material necessary for its use for the purpose thereof, it shall file in the office of the clerk of the county court, a particular description of the land and material sought to be condemned, and may apply to the county court to appoint commissioners to assess the damages the owner or owners thereof may be entitled to receive, and thereupon the said court shall appoint three impartial house-keepers of the county, who are owners of land, and who shall be sworn to faithfully and impartially discharge their duties under this law. Code Ky. 1894, § 835.

**Assessment of damages by commissioners.**—It shall be the duty of said commissioners to view the land and material, and to award to the owner or owners the value of the land or material taken, which shall be stated separately; and they shall also award the damages, if any, resulting to the adjacent lands of the owner, considering the purposes for which it is taken; but shall deduct from such incidental damages the value, if



any, of the advantages and benefits that will accrue to such adjacent lands from the construction and prudent operation of the railroad proposed to be constructed. They shall return a report, in writing, to the office of the clerk of said court, stating their award, and shall describe, in their report, the land and material condemned, give the names of the owners, and whether non-residents of the state, infants, of unsound mind, or married women. Code Ky. 1894, § 836.

1. **Condemnation of land.**—In a proceeding to condemn land one of the parties to the controversy should not be allowed, in the absence of the other, to discuss the merits of the case with the commissioners appointed to assess the damages. *L., St. L. & T. R. Co. v. Barrett*, 91 Ky., 487.

2. Measure of damages, in proceeding to condemn land, is the value of the land taken considering its relation to the remainder of the tract, and also the damages by reason of the depreciation in value of the residue of the land, including the cost of additional fencing made necessary by the taking of the land. The fencing is to be included as a part of the direct damages, and the cost thereof cannot be abated by the benefits arising from building the road. *L., St. L. & T. R. Co. v. Barrett*, 91 Ky., 487; *Asher v. L. & N. R. R. Co.*, 87 Ky., 391; *Covington R. Co. v. Piel*, 87 Ky., 267; *E. & P. R. Co. v. Helm*, 8 Bush., 681; *W. Va., P. & T. R. Co. v. Gibson*, 15 Law. Rep., 7.

3. Measure of damages to abutting property by reason of the construction of a railroad in the adjacent street. *Fulton v. Short Route Co.*, 85 Ky., 640; *J., M. & I. R. Co. v. Esterle*, 13 Bush., 667; *E., L. & B. S. R. Co. v. Combs*, 10 Bush., 382; and see *Cornwall v. L. & N. R. Co.*, 87 Ky., 72.

4. Corporation may abandon the purpose of taking property which it has had condemned for its use without incurring any liability to pay the damages awarded. *Manion v. L., St. L. & T. R. Co.*, 90 Ky., 491.

5. Necessity and public use are conditions precedent to the right to condemn land. *Tracy v. E. L. & B. S. R. Co.*, 80 Ky., 259.

6. The general law (act 1882) prescribing the mode of condemning land repealed the provisions of the charter of the company touching this subject. *Tracy v. E., L. & B. S. R. Co.*, 85 Ky., 270; *Chattoroi R. Co. v. Kinmer*, 81 Ky., 221.

7. Power must be strictly construed. 98 Ky., 67.

8. Property of citizens can only be taken for public use. 98 Ky., 67.

9. City cannot condemn for railroad. 98 Ky., 67.

**Report of commissioners; proceedings upon.**—Upon the application of said company, and upon filing such affidavits as may be necessary, the clerk of said court shall issue process against the owners to show cause why the said report should

not be confirmed, and shall make such orders as to nonresidents and persons under disability as are required by the civil code of practice in actions against them in the circuit court. Code Ky. 1894, § 837.

**Confirmation of report at appearance term if not excepted to.**—At the first regular term of the county court, after the owners shall have been summoned the length of time prescribed by the civil code of practice before an answer is required, it shall be the duty of the court to examine said report, and, if it shall appear to be in conformity to this law, and to the extent that no exceptions have been filed thereto by either party, it shall confirm said report as against the owners not excepting. Code Ky. 1894, § 838.

**Trial of exceptions; assessment of damages; appeal; when company may take possession.**—When exceptions shall be filed by either party, the court shall forthwith cause a jury to be empaneled to try the issues of fact made by the exceptions, and each juror shall be allowed one dollar per day for his services, to be taxed as cost. In assessing the damages the jury shall be governed by the rule prescribed in section 836 of this law; and, upon the request of either party, may be sent by the court, in charge of the sheriff, to view the land or material. If sufficient cause be not shown for setting aside the verdict, the court shall render judgment in conformity thereto, and shall make such orders as may be proper for the conveyance of the title upon the payment of the damages assessed. Either party may appeal to the circuit court, by executing bond as required in other cases, within thirty days, and the appeal shall be tried *de novo* upon the confirmation of the report of the commissioners by the county court, or the assessment of damages by said court, as herein provided, and the payment to the owners of the amount due, as shown by the report of the commissioners when confirmed, or as shown by the judgment of the county court. When the damages are assessed by said court, and all cost adjudged to the owner, the railroad company shall be entitled to take possession of said land and material, and to use and control the same for the purpose for which it was con-

demned, as fully as if the title had been conveyed to it. But, when an appeal shall be taken from the judgment of the county court by the company, it shall not be entitled to take possession of the land or material condemned until it shall have paid into the court the damages assessed and all costs. All money paid into court, under the provisions of this law, shall be received by the clerk of the court, and held subject to the order of the court, for which he and his sureties on his official bond shall be responsible to the persons entitled thereto. Code Ky. (1894), § 839.

**Possession of land condemned** cannot be taken until the damage assessed has been actually paid to the owner. *Curcio v. Colvin*, 92 Ky., 342; 87 Ky., 267.

### **Appeal, how taken; costs on appeal, by whom to be paid.—**

The appeal from the county court shall be taken by filing with the clerk of the court to which the appeal lies, a statement of the parties to the appeal, and a transcript of the orders of the county court, and thereupon the said clerk shall certify to the clerk of the county court that said appeal has been filed, and the clerk of the county court shall immediately transfer the original papers to the clerk of the court to which the appeal is pending; and if the owner on his appeal shall fail in the circuit court to increase the amount of damages awarded in the county court, he shall pay all the costs of the appeal; if the damages are increased in the circuit court, the other party shall pay all the costs of the appeal. The same rule as to payment of costs shall apply when the appeal is prosecuted by the party seeking to condemn land. Code Ky., 1894, § 840.

1. **Appeal; costs; practice.**—The court of appeals has jurisdiction of an appeal from the judgment of the circuit court in proceedings for the condemnation of Land. *Tracy v. E., L. & B. S. R. Co.*, 78 Ky., 309; and *P. & G. T. Co. v. Bobb*, 88 Ky., 226; as to practice see *Tracy v. E., L. & B. S. R. Co.*, 80 Ky., 259; as to costs see *L., St. L. & T. R. Co. v. Barrett*, 91 Ky., 487.

2. It is not necessary that a petition in the form prescribed by the code shall be filed, but the petition, or statement, filed by the corporation, must contain a description of the land and averments that it is necessary for its use, and that it has been unable to contract with the owner for it. *P. & G. T. Co. v. Bobb*, 88 Ky., 226.



## CHAPTER LXVIII.

*FENCES—CATTLE GUARDS—WHAT ARE LEGAL—HOW, WHEN AND IN WHAT STATES TO BE ERECTED.*

[In Tennessee.] **Railroads must fence track or be liable for stock injured.**—There is no law in Tennessee affirmatively requiring railroads to fence their tracks. By acts of 1891, ch. 101, however, they are rendered absolutely liable for all stock killed or injured unless their tracks are inclosed with good and lawful fences and good and sufficient cattle guards. The same act gives them absolute exoneration from liability where legal fences and cattle guards are erected. See acts Tenn. 1891, ch. 101; code Tenn. (Shannon's), § 1597, *et seq.* □

1. **Constitutionality of act.**—The supreme court held this act constitutional and valid in all its parts. 7 Pick. (Tenn.), 489.

2. **Complete exoneration from liability, if track fenced.**—In the case of *Railroad v. Russell* the supreme court held that "the second section of the acts of 1891, ch. 101, makes railroad companies absolutely liable in damages for all live stock killed or injured by moving trains upon unfenced tracks, and section 3 of same act gives them complete exoneration from liability where their tracks are fenced. These are weighty inducements to the end sought by the legislature, the one being in the nature of punishment for a failure to fence, and the other in the nature of a reward for fencing." 8 Pick. (Tenn.), 108. See also 7 Pick. (Tenn.), 489.

3. **Fencing in cities and around depots.**—Railroad companies are not required to fence their depots and stations, or the ground immediately surrounding same, or the crossings of public highways, or such portions of their tracks traversing towns or cities as are intersected by public streets; but the mere fact that the track is situated within the limits of an incorporated town does not, without more, excuse the company from the statutory duty to fence it. When the live stock enters upon the track where it is not required to be fenced, and pursues it until struck by a train at a point where the track is required to be fenced, but is not fenced the company is not liable under this statute, in the absence of other negligence. But if it has not constructed good and sufficient cattle guards on the line separating that portion which is not required to be fenced from that which must be, and the stock pursues the track and collides with the train, the company is liable. 10 Pick. (Tenn.), 451.

4. It is the point where the stock gets upon the track and not the place where injured that fixes liability. 10 Pick. (Tenn.), 451; 30 Ill., 451; 73 Mo., 465; 7 Am. & Eng. R. R. C., 558.

**What are lawful fences?**—The following are in Tennessee:

1. *Stone*.—A substantial stone fence or wall, three and one-half feet high. Acts Tenn., 1877, ch. 35, § 2; Code Tenn. [Shannon's], § 2980.

2. *Plank and post and rail*.—A post and plank, or post and rail fence four feet high. *Id.*

3. *Rail*.—A common worm or crooked rail fence five feet high. *Id.*

4. *Bank*.—Every bank or other means used as a fence, or part of a fence, equivalent, as an obstruction to stock, to either of the three classes of fence above named. *Id.*

5. *Wire*.—Any inclosure made by nailing fast two sound planks, each not less than six inches wide, to posts set firmly in the ground not more than eight feet apart, the bottom plank to be not more than three inches from the ground, and the second plank from the ground not more than four inches from the first; and then by stretching not less than four strands of barbed wire tightly between said posts above the planks, the topmost wire to be not less than four and a half feet from the ground, and the bottom wire to be four inches from the topmost plank; the next wire from the bottom one to be nine inches from the topmost plank, and the third wire from the bottom to be twenty-one inches from the topmost plank, the above distance as nearly as practicable. Acts Tenn. 1883, ch. 46, § 2.

6. *Osage orange*.—Bois d'arc or osage orange fences, wholly of bois d'arc or osage orange, or in part of bois d'arc or osage orange, and in part of wire or other material, at least four feet high, and at least eighteen inches across the top and sufficiently close to prevent stock of all kinds from passing through. *Id.* Shannon's Code Tenn., § 2980.

7. *Wire; for horses, cattle, and mules*.—The following shall be sufficient, and be deemed a lawful fence only as to cattle, horses, and mules: Any inclosure made by stretching not

less than five strands of barbed wire tightly between posts firmly set in the ground, or between growing trees and posts firmly set in the ground, not more than twenty feet apart; the topmost wire not less than four and a half feet from the ground, the bottom wire not less than six inches, and the next to the bottom wire not less than fifteen inches from the ground. Code Tenn. (Shannon's), § 2981.

8. *Three-wire, plank, or slat fence.*—In addition to the fences in § 2980, defined to be lawful fences (which are also hereby declared to be lawful fences), the following shall also be a lawful fence, to wit: A fence built on good-sized, substantial posts, set firmly in the ground, not more than nine feet apart. Said fence shall consist of three barbed wires, or three planks, or three slats running horizontally and fastened firmly to said posts, the first to be eighteen inches from the ground, and the second and third eighteen inches from the first and second, respectively, counting from the center of each. Said fence may consist entirely of wire strands, or of planks, or of slats, or it may be composed of a wire, plank, and slat. Acts Tenn. 1891, ch. 92; code Tenn. (Shannon's), § 2982.

The supreme court of Tennessee held, in an oral opinion delivered by Judge McAlister, that all eight of the foregoing class of fences applied to railroads.

**County court to adopt standard.**—The county courts of this state, at their respective January terms, shall have power to adopt for their said counties, respectively, a standard lawful fence as the same is defined in § 2980, or as is enacted and prescribed in § 2982, but said order so adopting said fence shall be spread on the minutes, and said standard fence, when so adopted, shall be the lawful fence for said county for the next ensuing year. Code Tenn. (Shannon's), § 2983; acts Tenn. 1891, ch. 92, sec. 2.

**Cattle guards on unfenced tracks required.**—Each and every railroad company whose unfenced track passes through a field or inclosure is hereby required to place a good and sufficient cattle guard or stop at the points of entering such field or



inclosure, and keep the same in good repair. Acts Tenn. 1889, ch. 248; code Tenn. (Shannon's), § 1595.

As to stock gaps or cattle guards at private and public crossings, see p. 710, *et seq.*, herein.

**Applies to fields hereafter opened.**—In case a field or inclosure through which such unfenced railroad track passes shall be enlarged or extended, or the owner of the land over which such unfenced track passes shall open a field so as to embrace the track of such railroad, such railroad company is hereby required to place good and sufficient cattleguards or stops at the margin of such inclosure of fields, and keep the same in repair; *Provided*, Such owner shall give the nearest or most accessible agent of such company thirty days' notice of such change. Code Tenn. (Shannon's), § 1596; acts Tenn. 1889, ch. 248, sec. 2.

**Liability for failure.**—The company is liable for all damages sustain by anyone by reason of the neglect or refusal to comply with the above two sections; *Provided*, it be not shown that the opening of such field was made capriciously and with intent to annoy and molest the company. Acts Tenn. 1889, ch. 248, sec. 3; code Tenn. (S.), § 1597.

## ALABAMA LAW AS TO FENCES.

[In Alabama]. **Railroads required to fence, when ; liability for stock injured.**—When such [railroad] commissioners deem it necessary that any railroad in this state, or any portion thereof, should be fenced, they shall notify the person or corporation operating such railroad of their conclusion; and, upon failure, after reasonable notice, to fence such railroad, or the portion thereof designated, the person or corporation operating such railroad shall be liable in damages for the value of any stock injured or killed upon the portion of the line so designated to be fenced, whether with or without negligence; but if the fence is erected in conformity to the notice, no liability shall attach for stock injured or killed upon the portion of the line so fenced, unless such injury or killing was committed willfully. Code Ala. 1896, § 3495.

**What are lawful fences in Alabama.**—"All inclosures and fences must be made at least five feet high, and if made of rails, the rails not more than four inches apart from the ground to the height of every two feet, or, if made of palings, the palings not more than three inches apart, or if made with a ditch, such ditch must be four feet wide at the top, and the fence, of whatever material composed, at least five feet high from the bottom of the ditch and three feet high from the top of the bank, and so close as to prevent stock of any kind from getting through; but a rail fence five feet high, with the rails not more than eighteen inches apart from the ground to the height of every three feet, shall be a lawful fence so far as cattle, horses, and mules are concerned. Code Ala. 1896, § 2110.

**Fences of three or more wires lawful as to mules, horses, and cattle.**—A fence made of three or more wires securely fastened to trees or posts not more than eight feet apart, the wires being not more than fifteen inches apart and the top wire at least four feet from the ground, is a lawful fence so far as concerns mules, horses, and cattle. Code Ala. 1896, § 2111.

**Fences of seven or more wires lawful as to all live stock.**—"A fence made of seven or more wires, securely fastened to trees or posts not more than eight feet apart, the first four wires being of four-inch barb and not over four inches apart, commencing with first wire four inches from the ground, the fifth wire not over six inches from the fourth, the sixth wire not over eight inches from the fifth, and the seventh wire fifteen inches from the sixth, is a lawful fence as against all stock whatsoever." Code Ala. 1896, § 2112.

**Cattle guard must be repaired in Alabama, when.**—Every person or corporation operating a railroad must put cattle guards upon such railroad, and keep the same in good repair, whenever the owner of the land through which the road passes shall make demand upon them or their agents and show that such guards are necessary to prevent the depredation of stock upon his land. Code Ala. 1896, § 3480.

**GEORGIA LAW AS TO FENCES.**

[In Georgia]. **Duty of railroads as to fencing.**—There is no general law in Georgia requiring railroads to fence their tracks.

1. But see 84 Ga., 256, where railroad held liable, after purchasing right of way and taking away protecting fence, for damages by cattle; also 84 Ga., 329, where railroad held liable after condemning right of way and removing stock gap.

2. **Stock gaps and cattle guards.**—For duty of railroad company as to putting in cattle guards and stock gaps, see p. 717. herein.

3. **Same.**—Under § 2243 of Code Ga., landowner must show necessity for cattle guards before he can recover. 104 Ga., 148.

4. **Same.**—Railways are not required to build cattle guards, save at public roads or private ways legally established. 104 Ga., 602.

5. **Same.**—Nor are they required to maintain them as to one not owning the land. 100 Ga., 600.

**What are legal fences in Georgia.**—“All fences, or inclosures, commonly called worm fences, shall be five feet high, with or without being staked and ridered, and from the ground to the height of three feet the rails shall not be more than four inches apart. All paling fences shall be five feet from the ground, and the pales not more than two inches apart. Code Ga., 1895; § 1762.

1. Section cited as to a barbed-wire fence with two strands of wire. 62 Ga., 679, 684.

2. Average height of five feet not sufficient if too low at some places. 68 Ga., 288.

3. No distinction as to different kinds of animals. 68 Ga., 288.

4. Law, general and uniform, and cannot be varied by special act. 84 Ga., 804, 812.

**Same. Inclosure by ditches, etc.**—Any inclosure made by means of a ditch or trench shall be three feet wide and two feet deep, and if made of both fence and ditch, the latter shall be four feet wide, and the fence five feet high from the bottom of the ditch. Code Ga., 1895; § 1763.

Section cited as to fence of wire three feet high and with barbs. 62 Ga., 679, 684.

**Same. Wire fence.**—The following inclosure shall be deemed and held to be a lawful fence. Any inclosure made by



stretching not less than six horizontal strands of barbed wire between posts firmly set in the ground or between growing trees not more than ten feet apart, the bottom wire to be not more than four inches from the ground, the next wire to be not more than four inches from the first, the next wire to be not more than six inches from the second, the next wire to be not more than eight inches from the third, the next wire to be not more than ten inches from the fourth, and the topmost wire to be not less than four and a half feet from the ground, with a plank strip not less than four inches in width either above or below the topmost wire. Code Ga. 1895, § 1764.

**Same. Not applicable to "no fence" counties.**—The provisions of the preceding section shall not apply to any county in this state now having, or that may hereafter have, in operation the "no fence" or stock law. Code Ga. 1895, § 1765.

**Same. When water courses are deemed fences.**—All water courses that are, or have been navigable, as far as navigation has ever extended up said streams, shall be deemed and considered fences, whenever by reason of freshet, or otherwise, fences cannot be kept on said streams, and shall be subject to the rules applicable to other fences. Code Ga. 1895, § 1771.

**Same. Lines of county and district fences, when.**—In each and every county and district in this state the boundary lines of each lot, tract, or parcel of land in said counties and districts shall be, and the same are hereby, declared a lawful fence; *Provided*, That this section shall not become operative in any county or district in this state which has not heretofore abolished or removed fences, either by a vote of the people or in pursuance of legal or illegal legislative action, or which has not heretofore abolished or removed fences by an election, although not held at the time prescribed in act approved September 5, 1883, unless by an election and in the manner provided for in § 1777. Code Ga. 1895, § 1772.

This and following sections not in *part materia* with §§ 2321 and 2322 as to damages by railroads. 71 Ga., 461.

The stock law may be considered by the jury in passing on the negligence of both plaintiff and railroad. 71 Ga., 461.

Act of November 26, 1890, a general law and constitutional. 92 Ga., 1.

When act of November 26, 1890, applies, live stock running at large on premises, other than owner's, could be taken up and impounded. 92 Ga., 1, 7.

**Stock gaps on W. & A. Railroad; right of landowners to build.**—"All persons in this state owning land through which the Western & Atlantic Railroad passes shall have permission to build stock gaps on said road when the line of their fences may cross the same, and shall have the privilege of joining their fences to such stock gaps; *Provided*, Said landowners shall not improperly interfere with the bed of said road, or render it less safe, or interfere with the running of the trains thereon."

1. For other laws of Georgia requiring the erection of stock gaps, see pp. 717, 718, herein.

2. The Western & Atlantic Railroad liable for killing stock as any other company. Code, Ga., 1895, § 2252.

## KENTUCKY LAW AS TO FENCES.

[In Kentucky.] **Railroad company required to fence as other landowners.**—That when any corporation, or person owning or controlling a railroad in this commonwealth, owns right of way, and its railroad shall have been constructed and in operation for the period of five years, the same is hereby put on equal terms and obligations with other landowners owning adjoining lands in this commonwealth. Ky. code (1894), § 1789; acts Ky. 1893, approved February 25.

1. The act of 1886 requiring railroads to erect fences was held unconstitutional. 91 Ky., 175.

2. Sections 810, 811, and 812 of the code Ky. 1894, as to injuring stock, do not apply to railroads which inclose their entire line of road with good and lawful fences and good and sufficient cattle gaps and keep the same in repair. Code Ky. 1894, § 813.

**Fence to be constructed in Kentucky by railroad and landowner.**—That every such corporation or person owning or controlling and operating a railroad in this commonwealth, and owning right of way, shall construct and maintain a good and lawful fence on one-half of the distance of the division line between such rights of way and the adjoining lands, except as is hereinafter provided; and that every owner of land or lands

adjoining any rights of way of such corporation or persons, as aforesaid, shall construct and maintain a good and lawful fence on one-half the distance of the division line between such land or lands and such rights of way, except as is hereinafter provided. Ky. code (1894), § 1790.

**When one party has built in Kentucky other may be required to build ; notice ; penalty.**—That when either party, either the corporation or person owning or controlling and operating such railroad, or the owner of lands adjoining the right of way thereof, has constructed or does construct a good and lawful fence on the division line between such right of way and the lands adjoining the same for one-half the distance of said line, and the other party has not constructed such fence on said line for half the distance thereof, nor has paid a sum sufficient to construct such fence, or any sum by agreement in lieu thereof, the party who has constructed such fence, as herein provided, shall, in writing, notify the party in default of the length of the division line between them, and that he (the party serving such notice) has constructed a good and lawful fence on said division line for one-half the distance thereof; and it shall be the duty of the party on whom such notice is served, and he is hereby required, to construct a good and lawful fence on the other half of the distance of said division line, within four months after date of receiving said notice. Where the corporation, or person owning or controlling and operating the railroad is in default, such notice may be served on the nearest station agent thereof. If the party on whom such notice is served fail to construct such fence as is herein provided, and within the time prescribed, such party so in default shall be fined one dollar for each and every day after the expiration of the said period of four months during which such fence shall not have been constructed. Said fines may be recovered by warrant in the name of the commonwealth of Kentucky before any court of competent jurisdiction. Kentucky Code (1894), § 1791.

There being no common law obligation for a railroad to build a fence along its line, but it being obliged by statute to build half of the fence



after notice, as in the case of persons owning adjoining lands, damages cannot be recovered against a railroad for failure to construct a fence, though it has refused to do so after notice, where plaintiff does not aver a construction of or offer to construct his half of the fence. 13 R., 436.

**Exemption from provisions of this law.**—That the provisions of this act shall not apply in any case wherein any corporation or person owning or controlling and operating such railroad has furnished the material to construct a fence, or condemned its right of way, and paid the owner or his vendor damages, in the estimation of which the cost of fencing was taken into consideration, nor be so construed as to require such corporation or person as aforesaid to build any fence along the line through any town or city, or across any public or private passway; nor shall such corporation or person be required to construct such fences as hereinbefore provided through unimproved or uncultivated lands until the owner of such lands shall have previously enclosed such lands on three sides with sufficient fences, or unless such lands be so enclosed with fences and a river, creek, bluff, or such other natural barrier as will prevent the egress of stock. Kentucky Code (1894), § 1792.

**Cattle guard; where to be erected in Kentucky.**—That all corporations and persons owning or controlling and operating railroads as aforesaid shall erect and maintain cattle-guards at all terminal points of fences constructed along their lines, except at points where such lines are not required to be fenced on both sides, and at public crossings. But where there is a private pass way across said railroad the landowner for whose benefit it is kept open shall bear one-half of the expense of cattle-guards and gates, the former to erect the gates, the corporation or person operating the railroad to erect the cattle-guards. Kentucky Code (1894), § 1793.

**Landowner in Kentucky, who has built entire fence, may remove his part; proviso.**—That any landowner who has already built a lawful fence along the whole distance of the division line between his land and the right of way of any railroad, shall have the right (in the absence of any agreement to the contrary), after giving three months' notice to the corporation or person operating said railroad (to be served on the

nearest station agent) of such intention to move one-half of said fence; *Provided, however*, He shall not, in removing such part of his fence, cause such corporation or person aforesaid to erect water gaps, and to fence at points where the grade of the roadbed is of such a character as may render fencing unnecessary. Ky. code (1894), § 1794.

**Lawful fence, what constitutes in Kentucky; agreement of parties.**—That, for the purpose of this act, any fence constructed of substantial posts, well set, not less than two feet in the ground and at no greater distance apart than ten feet, with wire not less than four feet and a half high, consisting of seven strands, shall be held to be a good and lawful fence; but nothing herein shall be construed to prevent parties from erecting any other class of lawful fence. Ky. code (1894), § 1795.

By § 1780 of the code of Ky. (1894), “ Every strong and sound fence of rails, or plank, or wire, or wire and plank, or iron, or of hedge, four and one-half feet high, and being so close that cattle cannot creep through, or made of stone or brick, four and one-half feet high, or a ditch three feet deep and three feet broad, with a hedge two feet high, or a rail, plank, stone, smooth or barbed wire, or brick fence two and one-half feet high on the margin thereof, the hedge or fence being so close that cattle cannot creep through, shall be deemed a lawful fence. Code Ky. (1894), § 1780.

**Law not applicable to owner who has received compensation.**—That this act shall not apply to any land where the owner or his vendor has received compensation for fencing the same. Kentucky Code, 1894; § 1796.

**Company shall erect entire fence in Kentucky; when right of way given.**—That when the owner of any land or lands, or any immediate or remote grantor or vendor of such owner, has given to the corporation or person owning or controlling and operating any railroad a right of way through such land or lands free of charge, then the entire fencing on the division lines between such lands and the right of way of such railroad shall be done by and at the cost of the corporation or person owning or controlling and operating such railroad, said fencing to be done as required by this act. Kentucky Code, 1894; § 1797.

**Parties may agree in Kentucky concerning fences.**—That nothing in this act shall be construed as preventing corporations, or persons owning or controlling and operating railroads, and owners of land adjoining such rights of way, from entering into contracts for the construction of fences of the character contemplated by this act; and lawful fences constructed under such contracts shall be a sufficient compliance with the provisions hereof. Kentucky Code, 1894; § 1798.

**Fences between parallel railroads or turnpikes in Kentucky.**—That where two railroad companies adjoin lands or right of ways, or a railroad company and a turnpike company adjoin land or right of ways, running parallel with no tillable or grazing lands between their right of ways, the railroad company shall not be required to build any fence along its side next to said pike or railroad, unless the turnpike or other railroad company has first built its half along said division line. Kentucky code, 1894; § 1799.

**Stock gaps in Kentucky.**—See p. 720, herein.

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## CHAPTER LXIX.

### FREIGHT CHARGES—WHAT MAY BE CHARGED—WHAT ON BRANCH ROADS—DISCRIMINATIONS—SALE OF FREIGHT FOR CHARGES.

**What rates may be charged; charter provision.**—[In Tennessee.] Section 14 of the Nashville, Chattanooga & St. Louis Railway charter provides that “the company shall have the exclusive right of transportation or conveyance of persons, goods, merchandise, and produce over the said railroad by them to be constructed; *Provided*, That the charge of transportation or conveyance shall not exceed thirty-five cents per one hundred pounds on heavy articles, and ten cents per cubic foot on articles of measurement for every hundred miles, and five cents a mile for every passenger; *And provided also*, That said company may, when they see fit, farm out their



rights of transportation on said road, subject to the rates above mentioned." See p. 9 herein.

This section, however, simply guarantees the company the right to charge for freight and passengers. It does not guarantee or authorize any particular rates, but simply prohibits it from charging more than the rates therein set out. The supreme court of Tennessee has held that "its intent was not to proportion the charges by any unit of distance, but to fix a maximum beyond which the company could not go, and to leave the tariff of charges within that limit to the company, subject to the rule of the common law, that charges should be reasonable, and to the regulating power of the courts and of the legislature. 9 Lea (Tenn.), 609; 128 U. S., 174-82; Book 32 L. C. P. Co., 377. Hence this section would not protect the railway from the control of any legally constituted state railroad commission.

**Railroad commission.**—By acts Tenn. 1897, ch. 10, p. 113, a railroad commission was created in order to secure just and reasonable rates, and thus prevent unjust discriminations. See act itself for contents.

**May charge branch roads, however, on basis of twenty miles, whether that long or not.**—Section 40 of the charter of the Nashville, Chattanooga & St. Louis Railway, p. 23, herein, provides, that branches may be built to connect with the Nashville, Chattanooga & St. Louis Railway, but that the company shall not be required to receive any car from such branches without receiving payment for at least twenty miles transportation.

It is doubtful whether this section is operative now, under the present law. See, also, section below.

**Railroads must receive loaded freight cars of other companies without charging more than on their own line.**—Under the general law every railroad company, when required, shall receive on its road and branches the full loaded freight cars of all other companies, transmit them to their destination, and return them, without charging for the transportation of the goods, wares, merchandise, and produce therein any greater rate of freight than they charge for similar transportation in

their own cars. Code Tenn. (Shannon's), § 1505; (M. & V.), § 1249b.

**Demurrage, charges for.**—In Tennessee a railroad company cannot charge demurrage in the absence of a contract. This may be done, however, by inserting a clause in the bill of lading to that effect. 15 Lea (Tenn.), 261.

**Railway may hold freight for charges.**—A common carrier is entitled to the possession of the goods until the freight charges are tendered. 9 Heis. (Tenn.), 567.

**May refuse to accept freight** for transportation, unless charges are paid in advance. Hutchison on Carriers, §§ 116, 443; 13 S. E. Rep., 137.

**One railroad cannot bind connecting road** as to charges, unless by agreement between them. 7 Bax. (Tenn.), 345.

**If articles shipped are of different character** than those named in bill of lading, and upon which rates are higher, connecting line may transport, charge and collect increased rate. 7 Bax. (Tenn.), 345.

**Receiving carrier is liable** for goods lost by connecting line in the absence of agreement or clause in the bill of lading to the contrary. 6 Heis. (Tenn.), 143, 208.

**Goods may be sold for freight charges, when.**—"After said freight or merchandise has been held at the said warehouse, depot, or station, uncalled for and not taken by the consignee, for the period of six months and one day from the date of the arrival of said goods at said warehouse, depot, or station, it shall be lawful for said common carrier and express company to send said goods to one of the principal offices in the state, to be sold for charges." Code Tenn. (Shannon's), § 3598; (M. & V.), § 2789; acts Tenn. 1870-1, ch. 17, sec. 1.

1. **What notice required.**—The railroad company must first notify the consignee by written or printed notice, to be delivered to the consignee in person, at his place of business, if in the city or town where received; or if not residing or doing business in the city or town, then through the postoffice, within three days after the arrival of the goods, of their receipt.

2. **Notice excused if residence and post office of consignee unknown.**—8 Lea (Tenn.), 32-4.

3. **Notice to consignor of non-acceptance.**—In ordinary cases it is not required of the common carrier to give notice to the consignor of the non-acceptance of the property by the consignee; but the nature of the property might be such as to require such notice. 6 Cold. (Tenn.), 360-1.

4. After the goods are received and stored the liability as a common carrier ceases *eo instanti*, and thereafter its liability is that of a warehouseman. 7 Pick. (Tenn.), 701-3; 12 Heis., 165; 8 Lea (Tenn.), 33.

**Same. Notice of sale and advertisement.**—“After said freight or merchandise has been held by said express company for the period of six months and one day, and giving notice to the consignor, if known, by written or printed notice, to be transmitted through the mail, placed in the postoffice at least thirty days before the day of sale, it shall be lawful for said express company to advertise said goods that have not been taken by the consignees and advertise the same in one or more of the daily papers in such principal city, the said advertisement to be inserted on each Wednesday of the month preceding the sale, specifying each article to be sold, and stating date of sale and place of sale.” Code Tenn. (Shannon’s), § 3599; (M. & V.), § 2790.

**Same. Disposition of proceeds.**—“After the sale has been made, the money received for the sale of such articles of merchandise, after deducting charges, shall be sent to the principal office in the state, there to be held for the benefit of the owners of the goods sold—a sworn copy to be kept at the office where the sale has been made, and a sworn copy, certified to by the auctioneer, to be sent to the principal office where the money is to be deposited; and they also notify the person or persons, if known, who shipped the goods or packages, after being in the warehouse six months, as they are required to notify the person to whom the same was sent.” Code Tenn. (Shannon’s), § 3600; (M. & V.), § 2791; acts Tenn. 1870-1, ch. 17, sec. 4.

**Perishable goods may be sold sooner.**—If the goods cannot be delivered, and are perishable, and sale thereof is of absolute necessity to protect the owners, the common carrier may sell them, and retain his charges; but if they are not so perishable, the common carrier must store them itself or with some respon-



sible warehouseman, with or without the advance of freight, a reasonable time. 9 Heis. (Tenn.), 568-70.

**When discriminations in freight charges are allowed.**—The duties and liabilities of railways as to discriminations are now largely controlled by congress in its act creating the interstate commerce commission. That act, however, only relates to such freight and passengers as are transported from one state to another. It does not affect strictly domestic transportations. In the State of Tennessee it has been held that a common carrier may discriminate in favor of persons living at a distance from the end of the route, where the object is to secure freight which would otherwise reach its destination by a different route, and that other customers not in like condition will have no right of action because of the discrimination, if the charges made against them are reasonable. *Rogan v. Aiken*, 9 Lea (Tenn.), 610. See also the unreported case of *Conan, McClung & Co. v. E. T., V. & Ga. Ry.*, decided at Knoxville, June, 1876. But see code Tenn. (M. & V.), § 1272 [Shannon's code Tenn., § 1531], which provides that the state shall have power, by appropriate legislation, to prevent unjust discriminations against, and extortion for, freights and passage over all railroads in this state.

1. **Railroad commission created.**—By Acts Tenn. 1897, ch. 10, p. 113. the legislature has created a railroad commission whose duty it is to secure just and reasonable rates and charges, and to prevent unjust discrimination. See act itself for contents.

2. **Railroads may refuse to carry passengers.**—By Acts Tenn. 1875, ch. 130, § 1, no keeper of any hotel, public house or carrier of passengers for hire, is bound or under any obligation to entertain, carry or admit any person whom he shall, for any reason whatever, choose not to entertain, carry or admit to his house, hotel, carriage or means of transportation. Code Tenn. (Shannon's), § 3046, (M. & V.) 2298 a. This act seems never to have been repealed.

## FREIGHT CHARGES IN ALABAMA.

[In Alabama]. **Discriminations unlawful. Special rates to industrial enterprises allowed. Rates to be posted at depot.**—"Every person or corporation, owning or operating a railroad in this state, must publish, by posting at all the freight

depots along the line of such railroad, the tariffs of rates for the transportation of freight thereon, showing the rates for each class, and including general and special rates; and from such tariffs no reduction shall be made in favor of any person which is not also made in favor of all other persons or corporations by change in such published rates. Special rates, if so published, may be given to any person or corporation to aid in the development of any industrial enterprise in this state." Code Ala. 1896, § 3462.

1. **Extortions prohibited.**—See Code Ala. 1896, § 3460.

2. **What evidence that rates are not extortionate.**—See Code Ala. 1896, § 3461.

3. **Agreements for pooling unlawful.**—See Code Ala. 1896, § 3464.

4. **Railroad commission.**—The legislature of Alabama has created a railroad commission, whose duty is to revise all tariff of charges for transportation, etc. See Code Ala. 1896, § 3491.

**Freight or passengers, however, may be transported free in Alabama.**—"Nothing in this code shall be so construed as to prevent any person or corporation owning or operating a railroad from transporting freight or passengers free of charge. Code Ala. 1896, § 3463.

**Carrier has lien on goods** until freight charges paid. 51 Ala., 512.

**Perishable goods may be sold for freight charges in Alabama.**—"When any fruit, vegetables, fresh meat, oysters, eggs, or fish, or other property of so perishable a nature as to be in danger of great depreciation, has been transported by a common carrier to the place of destination, and remains unclaimed for one day after its arrival, or if the consignee resides, or is present at the place of destination, for one day after personal notice in writing to him, or his agent, of the arrival of the freight, and the amount of charges due thereon, the same may be sold by the carrier or his agent at public outcry to the highest bidder for cash, at some public place, at the point of destination, on one day's notice, indicating the nature of the package, the consignee and the time and place of sale, by publication in some newspaper published at the place of destination, or, if none is published thereat, then by posting

the notice at the office or place of business of the carrier." Code Ala. (1896), § 4225.

But for this section, together with the succeeding one, the sale could not be made, as by § 4221 of the Code of Ala., 1896, a common carrier was prohibited from selling freight entrusted to it.

**Other goods may be sold for freight charges in Alabama; when.**—"When any other freight than that mentioned in the preceding section remains unclaimed for sixty days after its arrival at the place of destination, the same may be sold by the carrier or his agent at public outcry to the highest bidder for cash, at some public place at the point of destination, after notice, indicating the nature of the package, the consignee, and the time and place of sale, has been given for three weeks by publication, once a week in some newspaper published at the place of destination, or, if no such paper is there published, by posting the notice at three public places therein; but before any sale can be made under this section, the carrier must, before giving notice of the sale, demand payment of the charges due thereon from the owner or consignee, if either of them resides at the place of destination; but if neither of them resides at such place, failure to make such demand shall not prevent the sale; but notice of such sale must be given the consignor by mail." Code Ala. (1896), § 4226.

See 50 Ala., 25; 71 Ala., 117; 96 Ala., 447.

## FREIGHT CHARGES IN GEORGIA.

[In Georgia.] **Freight charges must be reasonable; extortion prohibited.**—"If any railroad corporation organized or doing business in this state under any act of incorporation or general law of this state now in force, or which may hereafter be enacted, or any railroad corporation organized or which may hereafter be organized under the laws of any other state, and doing business in this state, shall charge, collect, demand, or receive more than a fair and reasonable rate of toll or compensation for the transportation of passengers or freight of any description, or for the use and transportation of any railroad



car upon its track, or any of its branches thereof, or upon any railroad within this state which it has the right, license, or permission to use, operate or control, the same shall be deemed guilty of extortion, and upon conviction thereof shall be dealt with as hereinafter provided." Code Ga. 1895, § 2187.

1. **Unjust discriminations.**--By section 2188 of the same code unjust discriminations are forbidden. See also § 2214 of same code.

2. **Railroad commissioners.**--The legislature of Georgia passed an act creating a railroad commission, whose duty it is to make reasonable and just rates of freight and passenger tariffs, etc. See code Ga. 1895, § 2135 *et seq.*, for powers, duties, etc., of commission.

3. **Storage charges.**--Railroad commission fixes. Code Ga. 1895, § 2206.

4. **Demurrage.**--Railroad commission fixes rate. Code Ga. 1895, § 2206.

**Railroad has lien on goods for freight charges in Georgia.**--"The carrier has a lien on the goods for the freight, and may retain possession until it is paid, unless this right is waived by special contract or actual delivery. This lien exists only when the carrier has complied with his contract as to transportation. He can recover *pro rata* for the actual distance transported when the consignee voluntarily receives the goods at an intermediate point. Code Ga. 1895, § 2287.

1. Carrier has a lien for freight unless waived, and can detain goods to satisfy. 12 Ga., 566. If goods damaged during such detention, carrier not liable. 85 Ga., 343. If carrier refuses to deliver, when not entitled to lien, trover lies. 72 Ga., 655.

Last carrier has lien for freight on goods ordered shipped over another road, only where without notice of mistake. 72 Ga., 655.

Bill of lading not showing same, last carrier not bound by secret contract with first carrier as to reduced rates. 85 Ga., 383.

Where by mistake rate charged less than interstate commerce act allowed, carrier could correct same on discovery and enforce lien for full rate. 94 Ga., 775; but see 96 Ga., 665.

May retain any one of several consignments shipped under single contract of sale, to secure lien. 94 Ga., 636.

Freight due when goods arrive at railroad yard and consignee notified that they were subject to order. 94 Ga., 507.

If cars inaccessible to consignee's teams, he must first pay freight, and then insist that they be made accessible promptly. 94 Ga., 507.

2. **Baggage. Lien on.**--Baggage can be retained for dues. 25 Ga. 62; but does not exist where the contract is void; 25 Ga., 704.

**Goods may be sold for freight charges in Georgia, when.—**

“Whenever any person, natural or artificial, exercising the right of transportation for hire in this state, shall transport to the place designated for its delivery any property, and the same cannot be delivered according to the terms upon which said carrier has agreed to carry it, within six months from and after the time of arrival of such property at the place of delivery, then and in that case it shall be lawful for such carrier to sell for cash said property at public auction at such place as may be designated by such carrier, after having duly advertised the time, place and terms of sale, once a week for four weeks in some newspaper published or having a general circulation in the county wherein such sale is proposed to be made, and the proceeds of sale shall be applied in the first place to the payment of all charges of carriage due to such carrier, together with all expenses incident to such sale and the advertisement thereof, and then the residue, if any, of the proceeds be deposited in some convenient state or national bank, located in this state, to be selected by the carrier.” Code Ga. 1895, § 2303.

**Live stock and perishable goods may be sold for freight charges in Georgia, when.—**“Whenever the property so transported and not delivered is live freight, the same may be sold as hereinbefore provided, on five days’ notice, and whenever the property is fruit, vegetables, fresh meat, or other articles of an immediately perishable nature, the same may be sold as hereinbefore provided, on twenty-four hours’ notice. In any case provided for by this section the carrier will give the notice in such manner as the carrier, in the exercise of good faith and with a view to making the best sale, shall determine; but in every such case notice in a newspaper circulating or published at the place of sale, or personal notice to either the consignor or consignee of such freight, for the time for which such notice is required to be given, shall be deemed and held sufficient.” Code Ga. 1895, § 2304.

**Deposit of proceeds.—**“Upon the deposit in bank of the net proceeds of sale the entry of such deposit shall show the names

of both consignor and consignee, and the deposit shall not be drawn out except by the consent of both, or on the judgment or order of a court having jurisdiction in the premises. Code Ga. 1895, § 2305.

### FREIGHT CHARGES IN KENTUCKY.

[In Kentucky.] **Rates must be just and reasonable; extortion prohibited.**—"If any railroad corporation shall charge, collect, or receive more than a just and reasonable rate of toll or compensation for the transportation of passengers or freight in this state, or for the use of any railroad car upon its track, or upon any track it has control of, or the right to use in this state, it shall be guilty of extortion." Code Ky. (1894), § 816.

1. **Penalty.** See § 819 of same code.

2. **Trial for.** See § 829 of same code.

3. **Railroad commission.** The legislature of Kentucky has passed an act creating a railroad commission, whose duty it is to see that the laws relating to railroads are faithfully executed, and to exercise a general supervision over the roads in the state. Code Ky, (1894), § 821 *et seq.*

**Discrimination, what is in Kentucky.**—"If any corporation engaged in operating a railroad in this state shall, directly or indirectly, by any special rate, rebate, drawback or other device, charge, demand, collect or receive from any person a greater or less compensation for any service rendered in the transportation of passengers or property than it charges, demands, collects or receives from any other person for doing for him a like and contemporaneous service in the transportation of a like kind of traffic, it shall be deemed guilty of unjust discrimination." Code Ky. 1894, § 817.

1. **Penalty.**—See § 819 of same code.

2. **Trial for.**—See § 829 of same code.

**Preference or advantage forbidden.**—See code Ky. 1894, § 818.

**Long and short haul.**—See code Ky. 1894, § 820.

**Demurrage.**—The question as to whether charges made under the rules of car service association for detention of cars is



a reasonable charge, and the time fixed for loading and unloading is a reasonable time, are questions of fact. 98 Ky., 152.

**Railroad has lien on goods for freight charges in Kentucky.**—A common carrier of freight has a lien upon each shipment so long as it remains in its possession, for the charges thereon, but it cannot refuse to receive freight because back charges for other shipments have not been paid; nor can it, by mere notice to the shipper, acquire a lien on a shipment about to be made, for such back charges. *Eastern Ky. Ry. Co. v. Holbrook*. 4 R., 750.

**Goods perishable, or unclaimed, and baggage may be sold for freight charges, in Kentucky, when.**—“Every company that shall have unclaimed freight, not perishable, or unclaimed baggage in its possession, for one year or more, may sell the same at public auction, and, out of the proceeds thereof, retain the expenses of transportation, storage, advertisement, and sale. Notice of such sale shall be given to the consignor and consignee, by letter addressed to each of them, respectively, and mailed to the nearest postoffice to the place at which the goods were received, and to which they were carried; and notice of such sale shall also be published for four weeks in some newspaper of general circulation in the state. In case the freight is perishable, it may be sold as soon as it is deemed necessary and proper, and notice of such sale shall be given, if practicable, to the consignor and consignee, as herein directed. A record shall be kept of the articles sold, and the prices obtained therefor, and the surplus, if any, after payment of charges, shall be paid to the owner of such articles, if demanded at any time within two years from date of sale. Code Ky. 1894, § 785.

## CHAPTER LXX.

LEASES—POWER OF THIS COMPANY TO LEASE OTHER ROADS—  
 POWER TO LEASE ITS OWN ROAD TO OTHERS—WHAT  
 VOTE NECESSARY, AND WHO TO ACT UPON—  
 LEASE OF ROLLING STOCK, ETC.

**Right of Nashville, Chattanooga & St. Louis Railway to lease other roads.**—[In Tennessee.] It is a well established principle of law that railway companies have no power, in the absence of statutory authority, to make leases of their road and franchises, nor to receive a lease of the road and franchises of another company. Its charter being in the nature of a contract, the corporation cannot voluntarily surrender the powers and franchises it received from the state, or delegate the duties and obligations it owes to the public, without the express sanction of the state. 130 U. S., 1; 118 U. S., 290; 101 U. S., 71; 17 How., 36; 11 Otto, 71, 87; 6 Lea (Tenn.), 376; 45 Am. & Eng. R. R. Cases, 607; 32 Am. & Eng. R. R. Cases, 409; 39 Am. & Eng. R. R. Cases, 196; 4 Pick. (Tenn.), 153.

This being so, it would follow that unless such authority is given in the original charter of the Nashville, Chattanooga & St. Louis Railway, amendments thereto, or by the general law, it cannot be done.

**Same. Charter provision on subject.**—There is nothing in the original charter authorizing the company to lease other roads, and nothing relating to its right to lease its road to another company, save the following. Sec. 14, after limiting transportation charges, closes thus: "*And provided, also, That the said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned.*" Charter, sec. 14, p. 9, herein. This section, however, could hardly authorize the lease of the road, franchises, right of way, appurtenances, etc., but simply contemplated and sanctioned the farming out of the right of transportation.

In other words, the authority was conferred to allow other rail-ways, when the company saw fit, to run their engines and cars on the tracks of the Nashville & Chattanooga Railroad Company and carry freight, subject to the rates therein provided for. It did not contemplate a lease, but simply a license.

**Amendment to charter authorizing lease of other roads.—**

The legislature of Tennessee, on November 11, 1857, passed the following act:

“SEC. 1. That the Nashville & Chattanooga Railroad Company are hereby authorized and empowered to lease the Winchester & Alabama Railroad and the branch to Fayetteville, or any other railroad connecting with said Nashville & Chattanooga Railroad, for such time, and upon such terms and conditions as may be agreed upon between the president and directors of the said Nashville & Chattanooga Railroad Company, and the president and directors of the railroad company contracted with.

SEC. 2. *Be it further enacted*, That the companies of all laterals and main line railroad companies shall be entitled to the benefits of this act and shall have the benefits, and privileges and powers conferred on the said companies mentioned in the first section of this act.

SEC. 3. *Be it further enacted*, That all railroad companies availing themselves of the privileges of this act, as well as the companies specified in the first section, shall, in the hands of the lessees, be liable to all liens in favor of the state, and to all liabilities imposed by their charters or the general law of the land, in the same manner that the company or companies so leasing would have been had no lease been made; *Provided*, That the payment of the sinking fund provided for by existing laws shall be secured by the company so leasing said road.”

SEC. 4 AND 5. (Relate to other matters). Acts Tenn. 1857-8, ch. 8, p. 5; Code Tenn. (M. & V.), § 1249, d. and e.; Shannon's, §§ 1507-8.

1. **Validity of this amendment.**—The foregoing amendment to the charter of the Nashville, Chattanooga & St. Louis Railway was decided by Judge Lurton of the United States circuit court of appeals, sitting at



Cincinnati, in the case of *J. S. Rodgers v. N. C. & St. L. Ry.*, to be inoperative as an amendment; that the second section of the act, by extending the benefits of the act to all corporations owning either branch or trunk lines, became a general law; but whether treated as a special or general public law, it was a law dealing with the power of railroad companies to make or accept leases of the constructed lines owned by other railroad corporations; that the subject was revised in the Code (Tenn.), 1858, and that the effect of such revision was to repeal the provisions of the previous act and substitute therefor the legislation found in the code; that the code conferred the power without prescribing the mode of its exercise. The opinion has not as yet been published in any of the reports.

2. The supreme court of Tennessee has never passed upon this amendment, nor has any appeal as yet been taken from Judge Lurton's decision. The supreme court of Tennessee, as well as the United States, may uphold this decision; but with profound deference to the recognized ability and great learning of Judge Lurton, we do not believe they will do so. It is true that franchises granted after incorporation, without imposing additional burdens, whether enacted as amendments to the charter or as enabling acts, are ordinarily considered merely gratuitous, are not protected as contracts, and may be revoked at pleasure. *Thompson on Corp.*, § 5435; 102 Pa. St. 123. The question then resolves itself into whether or not the act has been repealed. It was originally passed as an amendment to the charter of the Nashville, Chattanooga & St. Louis Railway, but by section 2 thereof it was made to apply to "all laterals and main line railroad companies." It may therefore be divided into two parts. The first applying strictly to this company; the second, to all railroad companies. The first part was thus made a special law; the second a general law. This special law has never been repealed, though the general law portion of it has subsequently been modified. As a general rule, moreover, a general law does not repeal a prior special law merely because it embraces the same subject matter. An intent to repeal the special law must be manifested either by express words or by language extending the operations of the general laws to all cases embraced by it, or there must be some inconsistency or absurdity in the two standing together. *Lewis on Em. Dom.*, § 248; 3 *Sands* 689; 25 N. J. L., 54; 36 N. J. L., 198; 25 Mo., 540; 95 N. C., 77; 3 S. C., 381; 34 Wis., 173; 5 Ind., 413; 3 *Sneed* (Tenn.), 119; 1 *Head* (Tenn.), 114; 3 *Lea* (Tenn.), 557; 3 *Cold.* (Tenn.) 438; 16 *Lea* (Tenn.), 111; 3 *Bax.* (Tenn.), 152; 1 *Pick.* (Tenn.), 451; 4 *Pick.* (Tenn.), 138; 13 *Pick.* (Tenn.), 707; 5 *Pick.* (Tenn.), 723; 12 *Pick.* (Tenn.), 17; 157 U. S., 58; 109 U. S., 556.

Thus where an act incorporating a turnpike company required the rates of toll to be written on signboards in "large or capital letters," and a general act was afterwards passed requiring the rates of toll on turnpike roads to be written in capital letters, it was held that the private act was not suspended or repealed by the general act. 3 *Pick.*, 342. See, however, 113 Ill., 340; 13 C. B. (N. S.), 838; *Black on Intp. of Laws*, 116, 118.

The question being one of intent, and as there is no legislative intent manifested in any of the acts to repeal the special law as applicable to the Nashville, Chattanooga & St. Louis Railway to lease connecting branches, it should be considered as in full force and effect. The carrying of the general act portion of it into the code of 1858 should not disturb the special portion. The president and directors of the company, therefore, should, by a liberal interpretation of the act, be empowered to lease any railway connecting with the Nashville, Chattanooga & St. Louis Railway without regard to the wishes of the stockholders, for the act specifically provides that the lease shall be made for such time and upon such terms and conditions as may be agreed upon between the president and directors of the contracting roads. They were the ones and the only ones required to act. They were to "contract," to "agree," to make the lease for such time and upon such terms and conditions as they might agree upon. No mention is made of the stockholders. They were to do nothing.

The acts of 1881, ch. 9, as well as the other acts requiring the consent of the stockholders, was much broader in its terms than the acts of 1857-58, ch. 8, and for that reason the legislature very wisely required the consent of the stockholders in the former case, though not in the latter.

**General law, conferring right to lease other roads.**—Independent of the amendment to the original charter above set out, the right to lease other roads exists under the general laws of the state of Tennessee. The act above referred to was not only passed as an amendment to the charter of the Nashville & Chattanooga Railroad Company, but was also made to apply by section 2 thereof, to "all laterals and main-line railroad companies. This section was very ambiguous, but, as Judge Lurton remarked in the case of *Arrowsmith v. N. & D. R. R. Co.*, 59 A. & E. R. R. Cases, p. 87, "the codifiers of the code of 1858 simplified it, and carried it forward in the code in plain, unequivocal language, and any conflict, if any there be, between the acts passed during the session of 1857-8 and the code enacted at the same session, must be resolved in favor of the code. (Code, § 41). The effect of these sections is to permit connecting lines to be leased." 59 A. & E. R. R. Cases, p. 87.

The sections as brought forward in the code of 1858, as §§ 1122, 1123, and subsequently embodied in the code Tenn. (M. & V.), §§ 1249*d*, 1249*e*, were as follows:

“A railroad company owning any main line may contract with any company owning a railroad connecting with such main line for the lease thereof.” Code Tenn. (M. & V.), § 1249*d*; Shannon’s code, § 1507.

“The lessee shall hold such road subject to the liens and liabilities to which it was subject in the hands of the lessor, and be bound for all payments for which the lessor was liable.” Code Tenn. (M. & V.), § 1249*e*; Shannon’s code, § 1508.

**Same. The next act relating to leases** was passed March 13, 1868. This act, however, conferred no power to lease, but simply restricted its exercise among roads that already possessed the authority. It prohibited receivers, presidents, or president and directors or superintendent, other officers or agents from making a lease without the consent of the requisite majority of the stockholders. In other words, it was simply a legislative recognition of the common law. Acts Tenn., 1867–68 (Public), ch. 72, p. 92.

As the provisions of this act, however, were superseded by the Acts of Tenn., 1881, ch. 9, p. 10, secs. 2–3, there is nothing of any practical value left in it, if the Acts of Tenn., 1881, are constitutional.

**Same. The next act relating to leases** was passed January 27, 1870, the fourth section of which provided: “That it shall and may be lawful for the Mississippi River Railroad Company, and any other railroad company created by and existing under the laws of this state, and for any lessees of a railroad of such company, from time to time, to subscribe for or purchase the stock and bonds, or either, of any other railroad company or companies chartered by, or of which the road or roads is or are authorized to extend into this state; and to make contract with such company or companies for the construction, maintenance, repairs, or equipment, as well as lease of such other railroad or railroads, upon such terms as may be agreed upon by the company or companies owning the same, or by the companies and such lessees; *Provided*, That the roads of the said companies so contracting or leasing shall be directly, or by means of intervening railroads, connected with each other; *And provided*



*further*, That the authority herein conferred, of subscribing or purchasing stock or bonds, or leasing any railroad, shall not, when exercised, in any way impair the statutory lien created in favor of the State of Tennessee, under the general internal improvement laws of the state, on the roadbed, rolling stock, and equipment of either of the roads, or deprive the state, through its general assembly, from passing any and all laws which may be deemed necessary and proper to preserve the debt that may be due and owing to the state because of any state aid furnished to either of the contracting parties or roads." Acts Tenn. 1869-70, ch. 49, p. 327, sec. 4. See also code Tenn. (M. & V.), § 1262; Shannon's code, § 1520. See also acts Tenn. 1871, ch. 69, which might be construed into authority to lease. Code Tenn. (S.), § 1509; (M. & V., § 1250.

**Same.** The next act relating to leases was passed in 1881, and provided, among other things, by section 2, that "all railroad companies now or hereafter existing under the laws of this state, or of this state and any other state or states, be and they are hereby authorized and empowered to build, lease, or let, acquire by purchase, lease or otherwise, and operate, hold, or dispose of any railroad or railroads in any state or states, or any parts or portions of any such railroad or railroads, and the distribution thereof, as may be determined upon by their stockholders; *Provided*, That the same be approved by the votes of the holders of three-fourths in amount of the entire stock of said company, at a regular or called meeting of the stockholders of said company. . . . *Provided further*, That sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of the meeting." Acts Tenn. 1881, ch. 9, p. 10, sec. 2. Code (M. & V.) § 1275; Shannon's code, § 1540. This act, however, is open to many objections from a constitutional standpoint on account of its caption, though it has never been declared unconstitutional. The supreme court has never passed upon it save indirectly. See 4 Pick. (Tenn.), 140.

**Same.** The next act relating to leases was passed in 1891, as an amendment to the above act, and provided: "*Provided*, The same be approved by the vote of three-fourths in amount of the capital stock of said company present and voting, either in person or by written proxy, at a regular or called meeting of the stockholders. Acts Tenn. 1891, ch. 61, p. 146; Shannon's code Tenn., § 1540.

**Same.** The next act relating to leases was also passed in 1891, and during the same term of the legislature as the above. It provided, "That any and all railroad companies now or hereafter existing under the laws of this state, or of this state and any other state or states, whose charter of incorporation was or may be granted by this state, be and they are hereby authorized and empowered to acquire the line or lines of any other railroad company, either in this state or in any other state or states which may connect with and form parts and parcels or branches or extensions of the line of such company chartered by this state, or by this state and any other state or states; and are authorized and empowered to so acquire such branches or extensions by purchase, lease, or otherwise, and pay for the same by the issue of their own capital and bonds, or by guaranteeing those issued by the company whose line may be so acquired, purchased, or leased; *Provided, however*, That nothing in this act shall be construed so as to authorize the acquisition in any way by any corporation or company of parallel or competing lines." Acts Tenn. 1891, ch. 125, p. 274; Shannon's code Tenn., § 1521.

**Summary.**—From the foregoing acts it will clearly appear that the Nashville, Chattanooga & St. Louis Railway has now the right to lease other railroads. Though the right exists, the method of doing so, that is, whether to be done by president and directors, or by stockholders, together with the proper meeting and vote necessary, is left in considerable doubt by the seeming conflicts in the acts heretofore set out. These questions, however, will now be discussed.

**Who to authorize lease, directors or stockholders.**—If the acts Tenn. 1857-8, ch. 8, p. 5, heretofore referred to, and

which was passed as an amendment to the charter of the Nashville, Chattanooga & St. Louis Railway, is now in full force and operation as such, the president and directors of said company, alone, without the ratification of the stockholders, may lease any railroad connecting with it, for such time and upon such terms and conditions as may be agreed upon between them and the president and directors of the railroad company contracted with. As this amendment has been decided, however, as heretofore explained, not to be in full force and operation as such, prudence should require that no action be taken thereunder until the question is finally decided. Laying aside, therefore, this amendment, the general laws alone must be relied upon. In doing this, it must be borne in mind that, in the absence of statute, the directors of a railroad company have no authority to lease another road, or to lease their own road to another company, without the consent of the stockholders. It is true the board of directors are the managers of the business which the corporation is chartered to carry on, and they have the control and management of that business, "but they have no power to effect organic and fundamental changes in the corporation or its business without the consent of the stockholders. They are elected for a specified time to manage its affairs, and at the expiration of that time they are expected to turn over to the corporation the property with which they have been entrusted. They cannot dispose of it, and thus put it out of their power to return, or lease it, and thus change its business from that of making, constructing, maintaining, and operating a railroad to that of receiving rents for the use of such road. Such an act would involve a withdrawal from the control and management of the stockholders the entire property of the corporation forever, or for the term of years mentioned in the lease, and deny them the right of suggestion and disapproval as to its operation and management." 15 Am. & Eng. R. R. Cases, 56; 13 Reporter, 167; 18 Wall., 234.

This being so, under the general law, the proposition to lease must be submitted to the stockholders and acted upon by them.



**What vote and notice necessary to lease another road.**—If the amendment to the charter as heretofore set out, acts Tenn. 1857–58, p. 5, is still in full force and effect, the president and directors can, at a legally called meeting, by a majority vote of their own members, make the lease without the consent of the stockholders. As the amendment has been held inoperative, however, as heretofore explained, prudence should require that the general acts be followed until the question is finally decided. The vote and notice necessary under those acts will now be discussed.

In the case of *J. S. Rogers v. Nashville, Chattanooga & St. Louis Railway*, decided by the United States circuit court of appeals sitting at Cincinnati, November 9, 1898; but which opinion has not as yet been published in any of the reports, Judge Lurton, in construing these acts, held that “the acts of 1881, ch. 9, heretofore set out, regulated the power of leasing conferred by § 1122 of the code of Tenn., by requiring that such leases should be approved by three-fourths in amount of the entire capital stock of the leasing company; that the acts of 1887, ch. 198, heretofore set out, authorized all corporations ‘existing under the laws of this state to lease and dispose of their property’ to any corporation of this or any other state ‘engaged in or carrying on . . . the same general business as is authorized by the lessor corporation,’ and such lessee corporation was by the same act authorized to accept any such lease. The act contains several provisos, one of which was that any such lease should be made under the direction of the directors of such corporation when authorized or approved by the vote of a majority in amount of the stock of each corporation. Another proviso provided that ‘this act shall not be so construed as to authorize any corporation of this or any other state to lease or purchase any competing line of railroad.’ This act makes no reference to any previous legislation upon the same subject and contains no repealing clause. Inasmuch as it conflicts in respect to the previous mode of exercising this power of leasing or purchasing railroads, it must be regarded as so amending the acts of 1881, ch. 9, as to require only the

consent of a majority of the stockholders of each contracting company. This was followed by the acts of 1891, ch. 61, which amended the acts of 1881, ch. 9, so that section 2 of that act should read: '*Provided*, That the same be approved by the vote of three-fourths in amount of the capital stock of said company present and voting, either in person or by written proxy, at a regular or called meeting of the stockholders of said company.' This act makes no reference to the act of 1887, ch. 198, and contains no repealing clause. The necessary effect of the act was to revive the provisions of the older act of 1881, so far as they related to the subject of leasing or purchasing railroads by railroad corporations 'existing under the laws of Tennessee,' 'or of this and any other state or states.' The conclusion we reach is that the power of the Nashville, Chattanooga & St. Louis Railway to accept a lease depends upon the acts Tenn. of 1881, ch. 9, as amended by the acts Tenn. of 1891, ch. 61.' "

Under this decision, therefore, in order to lease another railroad, the proposition must be approved by the vote of three-fourths in amount of the capital stock of the company present and voting, either in person or by written proxy, at a regular or called meeting of the stockholders of said company, and that sixty days' notice be given in Memphis, Knoxville, and Nashville daily newspapers of the time, place, and purpose of the meeting.

1. It will be noticed that only three-fourths of the stock present and voting is required. This would not necessarily require three-fourths of the entire capital stock unless that amount was present and voting.

2. **Both roads must have power.**—In order to lease or sell a road, the lessor or vendor company must have power to lease or sell, and the lessee or vendee company must have power to accept the lease, or to buy. 161 U. S., 686; 99 Ky., 570

**Right of Nashville, Chattanooga & St. Louis Railway to lease its own road, or any part thereof, to another company.**—As heretofore shown, the Nashville, Chattanooga & St. Louis Railway has the power to lease other railways. We will now discuss the authority to lease its own road or any part thereof to another company. This cannot be done

without legislative authority expressed either in the charter or in the general law.

There is nothing in the charter or amendments thereto, upon the subject. The only clause having any reference to the subject is to be found in section 14, which, among other things, provides as follows: "And provided also, that the said company may, when they see fit, farm out their rights of transportation on said road, subject to the rates above mentioned." This section, however, could hardly authorize the lease of the road franchises, right of way, appurtenances, etc., as before explained, but simply contemplated and sanctioned the farming out of the right of transportation. In other words, the authority was conferred to allow other railways, when the company saw fit, to run their engines and cars on its tracks. It did not contemplate a lease, but simply a license.

This being so, the right to lease, if it exists at all, must be found in the general law. There are seven acts of the legislature in this state bearing upon the subject of the leasing of railways.

The first is that of 1857-8, p. 5, heretofore set out, which, however, only empowers one railway to lease another. It does not authorize the lease of their own road to another company.

The second is that of 1867-8, p. 92, heretofore set out, which, however, did not confer the power upon railways to lease their tracks, etc., but simply regulated the exercise of that power among roads already possessing it.

The third is that of 1869-70, ch. 49, p. 327, as heretofore set out, which, however, only related to the leasing by one railway of another railway.

The fourth is that of 1881, p. 10, ch. 9, as heretofore set out, which only authorized railways to lease other railways. It did not authorize a railway to lease its tracks to another company.

The fifth is that of 1887, ch. 198, p. 329, and which is the only act giving the authority in this state. It provides that "all corporations now or hereafter existing under the laws of this state, whether incorporated under special or general laws



of the state, shall have the power, and they are hereby authorized and empowered to lease and dispose of their property and franchises, or any part thereof, to any corporation of this or any other state engaged in or carrying on, or authorized by its charter to carry on, in this or any other state, the same general business as is authorized by the charter of any such lessor corporation ———; *Provided, however,* That any such leases or contracts, when made by or under the direction of the board of directors of the contracting corporation, shall be authorized or approved by the vote of a majority in amount of the stock of the lessor corporation present or represented at a regular or called meeting of the stockholders of said corporation, and provided further, that sixty days notice of such meeting be given in a Memphis, Knoxville and Nashville daily newspaper of the time, place and purpose of such meeting," etc. Code Tenn. (Shannon), § 2043.

The sixth and seventh acts are those heretofore set out as passed in 1891 on pp. 146, 274, respectively. These acts, however, only relate to the leasing by one railway of another. They do not authorize a railway to lease its road to another.

**Same. Who to authorize, stockholders or directors; vote necessary.**—As will be seen, therefore, the act of Tenn. 1887, p. 329, ch. 198, above set out, is the only authority now existing by statute in this state authorizing a railway to lease its road to another. This being the only act, its provisions must be strictly followed, and the president and directors of the Nashville, Chattanooga & St. Louis Railway cannot, by themselves, perfect a valid and binding lease of the road to another company without the authority or approval of a vote of a majority in amount of the stock of the company present or represented at a regular or called meeting of the stockholders, and that sixty days' notice of such meeting must be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of such meeting.

Prior to the acts of Tenn. 1887, ch. 198, above referred to, there was no general law authorizing a railway to lease its road, or any part thereof, or even its joint use, to another company. Hence, when this company desired to convey a joint use of its tracks to the Memphis &

Charleston Railroad Company, from Stevenson, Ala., to Chattanooga, a special act had to be passed authorizing it, which was done as per acts Tenn. 1857-8, ch. 150. It gave authority to the Nashville & Chattanooga Railroad to contract with the Memphis & Charleston Railroad for the joint use of the track on such terms as the roads might agree upon.

**Power of Nashville, Chattanooga & St. Louis Railway to lease its purchased or leased roads in Tennessee.**—The Nashville, Chattanooga & St. Louis Railway has purchased and leased many railroads in the state of Tennessee, together with all their rights, privileges, and franchises. In ascertaining its power to lease or sell those roads to other companies regard must also be had to their charters, amendments, etc., as well as to the laws of Tennessee, affecting them. In other words, as to the lines of the roads so purchased, the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers and privileges and subject to all the duties and liabilities of the respective original companies. If they originally had the power to lease or sell, then the Nashville, Chattanooga & St. Louis Railway would have that power as to their particular lines as fully and completely as the original company or companies had. *Rogers v. Nashville, Chattanooga & St. Louis Railway et al.*, decided Nov. 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which opinion has not as yet been reported. See also 15 Lea (Tenn.), 37; 112 U. S., 610.

The same would be true as to the lines of any railroads the Nashville, Chattanooga & St. Louis Railway has leased or may hereafter lease in Tennessee, if all their rights, powers, privileges, and franchises passed in the absence of any clause in the lease prohibiting subleasing. Even should there be a clause, however, prohibiting subleasing, that would not prevent a mortgage or assignment of the entire leasehold interest, as that would be in no manner a violation of a covenant not to sublet. 27 Barb. (N. Y.), 415; 25 N. J. L. (1 Dutch), 291, 285; 33 N. J. L. (4 vr.), 254; 47 Minn., 189; 15 L. R. A., 236; 16 Johns, 159; 1 Wood on Land and Tenant, sec. 258, 327; Taylor on Land and Tenant, sec. 16; 129 Ill., 318; 14 Lea (Tenn.), 92; 9 Lea (Tenn.), 1.

**Railways may lease rolling stock and equipments, and provide for conditional sale thereof.**—For terms and conditions, see heading “Sale,” herein and acts Tenn., 1885, ch. 96.

### ALABAMA ACTS AS TO LEASING.

[In Alabama.] **Power of the Nashville, Chattanooga & St. Louis Railway to lease other roads, or to lease its own road, in Alabama.**—In discussing this it is necessary to bear in mind that, as to its main line, the Nashville, Chattanooga & St. Louis Railway is a foreign corporation in Alabama, though, as to the lines of those Alabama railroads it has purchased, it is a domestic corporation there. A corporation is not incorporated in a foreign state simply by the purchase or lease of a domestic railroad of that state (Elliott on Railroads, sec. 26; 1 Hilton (N. Y.), 62; 30 N. J. L., 473; 31 N. J. L., 531; 32 Ohio, St. 468; 50 Pa. St., 26; see, however, 85 Tenn., 189); but it would be domesticated as to the lines of the roads so purchased, and, hence, no suit growing out of the operation of a road so purchased could be removed to the federal court on the ground of “nonresidence.” 108 U. S., 436; 14 Minn., 303; 43 Mich., 354; 1 Wall., 40; 12 Wall., 65, 82. See also 90 Ga., 523; 76 Ga., 99; 9 Am. & Eng. R. R. Cases, 201; 53 Ala., 237; 21 Law Rep., 138; 3 Tenn. Ch., 602; 59 Ga., 263; 2 Woods, 409; 30 Fed. Cases, 73.

A railroad chartered by two states is a citizen of each. 118 U. S., 161.

It is true the State of Alabama authorized the Nashville, Chattanooga & St. Railway to build its main line in that state, and conferred upon it “all the rights, privileges, immunities,” etc., of its Tennessee charter (see p. 55 *et seq.* herein), but this did not domesticate the main line of the Nashville, Chattanooga & St. Louis Railway in Alabama, nor did its subsequent purchase of the Tennessee & Coosa Railroad, the Middle Tennessee & Alabama Railroad, or the Huntsville & Elora Railroad. 32 Fed. Rep., 849; 21 Fed. Rep., 817; 20 Am. & Eng. R. R. Cases, 597; 22 Fed. Rep., 353; 46 Mich., 224; 76 Ala., 388; 13 Am. & Eng. R. R. Cases, 296; 23 Am. & Eng. R. R.



Cases, 487; 49 N. J. L., 193; 129 Pa. St., 463; 18 Alt. Rep., 412. See also 118 U. S., 290; 104 U. S., 5.

**Same. Power as to its main line, to lease.**—The Nashville, Chattanooga & St. Louis Railway proper being a foreign corporation in Alabama, as heretofore explained, reference must be had to the law of its organization as well as to the general powers conferred upon it in the state of its creation in determining its power to lease in Alabama. Corporations going beyond the jurisdiction that created them can ordinarily do only those things which, by express grant or necessary implication, they are authorized or empowered to do by the laws of the state granting their charters. 36 Am. & Eng. R. R. Cases, 449; 74 Texas, 474; 8 S. W. Rep., 533; 35 Kas., 236; 10 Pac. Rep., 596; 24 Am. & Eng. R. R. Cases, 34; 3 Head (Tenn.), 337; 72 Ill., 50; 22 Am. Rep., 133; 29 Barb. (N. Y.), 650; Thompson on Corp., sec. 7920; 1 R. (Ky.), 8.

It has been held, however, that a foreign corporation authorized by an act of the Assembly of the State it desires to enter to construct a portion of its road through the State, is entitled to the same rights and privileges as domestic corporations. 6 Watts & S. (Pa.), 101; 33 Pa. St., 175; 14 Pa. St., 65; 6 Whart. (Pa.), 45; 14 How. (U. S.), 80.

But a foreign corporation cannot by comity exercise powers within a state which a domestic corporation would be prevented from exercising under the constitution of the state. 52 Am. & Eng. R. R. Cases, 115; 50 Fed. Rep., 338.

It may be done, however, by express legal permit from the legislature.

From the foregoing it will clearly appear that the power of the Nashville, Chattanooga & St. Louis Railway proper to lease its road, or to lease other roads in Alabama, must largely depend on the powers it possesses in Tennessee. As it has heretofore been shown that it possesses those powers in Tennessee, it follows that it possesses them there in the absence of any legal legislation to the contrary, which does not now exist.

1. **Lease of part of line.**—If the power to lease exists, the power to lease a part of the line instead of the whole also exists. 111 N. Y., 1, 64; 83 Ia., 720; 50 Ind., 85. See also 77 N. Y., 232; 45 Colo., 365; 37 Ga., 644.

**2. Both roads must have power.**—In order to lease or sell a road the lessor or vendor company must have power to lease or sell, and the lessee or vendee company must have power to accept the lease or to buy. 161 U. S., 686; 99 Ky., 570.

**Same. power to lease its purchased roads in Alabama.**—The Nashville, Chattanooga & St. Louis Railway has purchased the Tennessee & Coosa Railroad (see p. 287 *et seq.*, herein), the Huntsville & Elora Railroad (see p. 214 *et seq.*, herein), and the Middle Tennessee & Alabama Railroad (see p. 406 *et seq.*, herein), all of which are domestic corporations of Alabama, together with all of their rights, privileges, and franchises. In ascertaining the power of the said Nashville, Chattanooga & St. Louis Railway to lease those roads to other companies, regard must also be had to the law of the organization of said domestic companies as well as to the laws of Alabama affecting them. In other words, as to the lines of those roads the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers and privileges, and subject to all the duties and liabilities, of the respective original companies. If the companies originally had the power to lease or sell, then the Nashville, Chattanooga & St. Louis Railway, as the legal owner of all the rights, powers, privileges, and franchises thereof, would also have that power as to those particular lines as fully and as completely as the original companies had. *Rogers v. N., C. & St. L. Ry.*, decided November 9, 1898, by United States circuit court of appeals, sitting at Cincinnati, but which opinion has not yet been reported. See, also, 15 Lea (Tenn.), 37; 112 U. S., 610.

The same would be true of any other railroad it may purchase in Alabama.

**Same. Power to sublease any road it may lease.**—The same would be true as to the lines of any roads the Nashville, Chattanooga & St. Louis Railway might lease in Alabama if all their rights, powers, privileges, and franchises passed, in the absence of any clause in the lease prohibiting subleasing. Even should there be a clause, however, prohibiting subleasing, that would not prevent a mortgage or assignment of the entire

leasehold interest, as that would be in no manner a violation of the covenant not to sublet. 27 Barb. (N. Y.), 415; 25 N. J. L. (1 Dutch), 291, 285; 33 N. J. L. (4 Vr.), 254; 47 Minn., 189; 15 L. R. A., 236; 16 Johns, 159; 1 Wood on Landlord & Tenant, secs. 258, 327; Taylor on Landlord & Tenant, sec. 16; 129 Ill., 318; 14 Lea (Tenn.), 92; 9 Lea (Tenn.), 1.

**May lease, purchase, aid, or take stock in other roads, by Alabama acts.**—A corporation, chartered under the laws of this or any other state heretofore or hereafter created for the purpose of building, constructing, or operating a railroad, may, at any time, by means of subscription to the capital of any other corporation or company, or otherwise, aid such corporation or company in the construction of its railroad, for the purpose of forming a connection with the road owned by such corporation or company furnishing aid; or any railroad corporation, organized in pursuance of the laws of this or any other state, may lease or purchase any part or all of any railroad constructed by any other corporation or company, if the lines of such road are continuous or connected, upon such terms and conditions as may be agreed on between the corporations or companies respectively; or any two or more railroad corporations or companies, whose lines are so connected, may enter into any arrangement for their common benefit, consistent with, and calculated to promote the objects for which they were created; but no such aid shall be furnished, nor any purchase, lease, or arrangement perfected, until a meeting of the stockholders of each of such corporations or companies has been called by the directors thereof, at such time and place, and in such manner as they shall designate; and the holders of a majority in value of the stock of such corporation or company, represented at such meeting, in person or by proxy, and voting thereat, shall have assented thereto. Code Ala., 1896, § 1170.

1. **Without statutory aid, railroad has no power to lease its property.** 88 Ala., 572; 101 Ala., 607.

2. **Lease invalid unless both corporations follow above statute.** 10 Ala., 607.

3. The above section doubtless authorizes leases for any reasonable



time, though section 1032 of the same code provides that: "No leasehold estate can be created for a longer term than twenty years, though if made longer it is only void as to the excess." 83 Ala., 290.

4. For powers conferred on Nashville, Chattanooga & St. Louis Railway by state of Alabama, see pp. 55-60. herein.

5. By Acts Alabama, 1898-99, No. 468, p. 28, domestic corporations were authorized to sell their railroads to foreign corporations in a method therein set out.

6. **Power to lease purchased road.**—The Nashville, Chattanooga & St. Louis Railway has purchased several roads in Alabama, together with all their rights, powers, privileges, and franchises. In such cases, the power to lease would also depend upon the law of their original organization. In other words, as to the line of such roads the Nashville, Chattanooga & St. Louis Railway, would be vested with all the powers and privileges and subject to all the duties and liabilities of said original company. If the road so purchased originally had the power to lease or sell, then the Nashville, Chattanooga & St. Louis Railway would have that power as to that particular line. The charters of such companies therefore must also be looked to. 15 Lea. (Tenn.). 37; 112 U. S., 610. See, also, case of *Rogers v. N., C. & St. L. Ry.*, decided Nov. 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which case has not yet been reported.

**Same. May also indorse or guarantee rentals, bonds, etc., in Alabama.**—Any railroad company incorporated by the laws of any other state and now owning or operating, or which is or may be authorized to own or operate, by lease or otherwise, any railroad in this state, is authorized and empowered, upon the resolution of its board of directors, to aid any railroad company incorporated under any general or special law of this state, in the construction, renovation or operation of its railroad, by the indorsement or guaranty of its securities which have been or may be issued for such purpose, in such manner as may be agreed upon by the board of directors of the contracting companies, or by leasing, or by guaranteeing the rentals of any lease of any such railroad, on such terms as may be agreed upon by the respective boards of directors. Code Ala. 1896, § 1171.

### GEORGIA ACTS AS TO LEASING.

[In Georgia.] **Power of Nashville, Chattanooga & St. Louis Railway to lease other roads, or to lease its own road in Georgia.**—In discussing this it is necessary to bear in mind that,

as to its main line, the Nashville, Chattanooga & St. Louis Railway is a foreign corporation in Georgia, though, as to the lines of those Georgia railroads it has purchased or leased, it is a domestic corporation there. A corporation is not incorporated in a foreign state simply by the purchase or lease of a domestic railroad of that state. Elliott on Railroads, sec. 26; 1 Hilton (N. Y.), 62; 30 N. J. L., 473; 31 N. J. L., 531; 32 Ohio St., 468; 58 Pa. St., 26. See, however, 85 Tenn., 189; but it would be domesticated as to the line of the road so purchased or leased, and hence no suit growing out of the operation of the line so purchased could be removed to the federal court upon the ground of "nonresidence." 108 U. S. R., 436; 14 Minn., 303; 43 Mich., 354; 1 Wall., 40; 12 Wall., 65, 82; see, also, 90 Ga., 523; 76 Ga., 99; 9 Am. & Eng. R. R. C., 201; 53 Ala., 237; 21 Law Rep., 138; 3 Tenn. Chy., 602; 59 Ga., 263, and 74 Ga., 634, which latter case was reversed by federal court. 2 Woods, 409; 30 Fed. Cas., 73.

A railroad chartered by two states is a citizen of each. 118 U. S., 161.

It is true the state of Georgia authorized the Nashville, Chattanooga & St. Louis Railway to build its main line in that state, and conferred upon it "all the rights, privileges, and immunities," etc., of its Tennessee charter. See p. 55, *et seq.*, herein; but this did not domesticate the main line of the Nashville, Chattanooga & St. Louis Railway in Georgia, nor did its subsequent purchase of the Rome railroad. 32 Fed. Rep., 849; 21 Fed. Rep., 817; 20 Am. & Eng. R. R. C., 597; 22 Fed. Rep., 353; 46 Mich., 224; 76 Ala., 388; 13 Am. & Eng. R. R. C., 296; 23 Am. & Eng. R. R. C., 487; 49 N. J. L., 193; 129 Pa. St., 463; 18 Atl. Rep., 412; see, also, 118 U. S., 290; 104 U. S., 5.

**Same. Power as to its main line to lease.**—The Nashville, Chattanooga & St. Louis Railway proper being a foreign corporation in Georgia, as heretofore explained, reference must be had to the law of its organization, as well as to the general powers conferred upon it in the state of its creation, in determining its power to lease in Georgia. Corporations acting beyond the jurisdiction that created them can do only those things which, by express grant or necessary implication, they are au-

thorized or empowered to do by the laws of the state granting their charters. 36 Am. & Eng. R. R. Cas., 449; 74 Texas, 474; 8 S. W. R., 533; 35 Kan., 236; 10 Pac. Rep., 596; 24 Am. & Eng. R. R. Cas., 34; 3 Head (Tenn.), 337; 72 Ill., 50; 22 Am. Rep., 133; 29 Barb. (N. Y.), 650; Thompson on Corp., sec. 7920; 1 R. (Ky.), 8.

It has been held, however, that a foreign corporation, authorized by an act of the assembly of the state it desires to enter, to construct a portion of its road through the state, is entitled to the same rights and privileges as domestic corporations. 33 Pa. St., 175; 6 Watts & S. (Pa.), 101; 14 Pa. St., 65; 6 Whart. (Pa.), 45; 14 How. (U. S.), 80.

But a foreign corporation cannot, by comity, exercise powers within the state which a domestic corporation would be prevented from exercising under the constitution of the state. 52 Am. & Eng. R. R. Cas., 115; 50 Fed. Rep., 338.

See §§ 1847, 1850, code Ga., 1895, on this line, further on in this chapter.

It may be done, however, by express legal permit from the legislature.

From the foregoing it will clearly appear that the power of the Nashville, Chattanooga & St. Louis Railway proper to lease its road, or to lease other roads in Georgia, must largely depend on the powers it possesses in Tennessee. As it has heretofore been shown that it possesses those powers in Tennessee, it would follow that it possesses them there, in the absence of any legal legislation to the contrary, which does not now exist. See 43 Ga., 605, 651; 70 Ga., 464; 1 R. (Ky.), 8.

1. **Both roads must have power.**—In order to lease or sell a road, the lessor or vendor company must have power to lease or sell, and the lessee or vendee company must have power to accept the lease or to buy. 161 U. S., 686; 99 Ky., 570.

2. **Lease of part of line.**—If the power to lease exists, the power to lease a part of the line, instead of the whole, also exists. 111 N. Y., 1, 64; 83 Iowa, 720; 50 Ind., 85. See, also, 77 N. Y., 232; 45 Cal., 365; 37 Ga., 644; Cook on Corp. (4th ed.), sec. 894.

**Same. Power to lease its purchased or leased roads.**—The Nashville, Chattanooga & St. Louis Railway has purchased the



Rome Railroad (see p. 379, herein), a corporation of Georgia, together with all its rights, privileges, and franchises. In ascertaining the power of the said Nashville, Chattanooga & St. Louis Railway to lease that road to another company, regard must also be had to the law of the organization of the Rome Railroad Company, as well as the laws of Georgia affecting it. In other words, as to the line of that road, the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers and privileges, and subject to all the duties and liabilities, of the original company. If the Rome Railroad Company originally had the power to lease or sell, then the Nashville, Chattanooga & St. Louis Railway would have that power, as to that particular line, as fully as the original company had. *Rogers v. N., C. & St. L. Ry.*, decided November 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which opinion has not yet been reported. See, also, 15 Lea (Tenn.), 37; 112 U. S., 610.

The same would be true of any other railroad it may purchase in Georgia.

The same would be true as to the lines of any roads the Nashville, Chattanooga & St. Louis Railway might lease in Georgia, if all their rights, powers, privileges, and franchises passed, in the absence of any clause in the lease prohibiting subleasing. Even should there be a clause, however, prohibiting subleasing (as was done in the lease to the Western & Atlantic Railroad), that would not prevent a mortgage or assignment of the entire leasehold interest, as that would be in no manner a violation of a covenant not to sublet. 27 Barb. (N. Y.), 415; 25 N. J. L. (1 Dutch), 291, 285; 33 N. J. D. (4 Vr.), 254; 47 Minn., 189; 15 L. R. A., 236; 16 Johns., 159, 1 Wood on Land. and Tenant, secs. 258, 327; Taylor on Land. and Tenant, sec. 16; 129 Ill., 318; 14 Lea (Tenn.), 92; 9 Lea (Tenn.), 1.

**Same. Railroads chartered under general law of Georgia may lease other roads or lease its own road to others; when.**—Any railroad company incorporated under the provisions of this article shall have authority to sell, lease, assign or transfer its stock, property, and franchises to, or to consoli-

date the same with, those of any other railroad company incorporated under the laws of this or any other state or of the United States, whose railroad within or without this state shall connect with or form a continuous line with the railroad of the company incorporated under this law, upon such terms as may be agreed upon, and, conversely, any such corporation organized under the provisions of this article may purchase, lease, consolidate with, and absorb and merge into itself the stock, property, and franchises of any other railroad company incorporated under the laws of this or any other state or the United States, whose railroad within or without this state shall connect with or form a continuous line or system with the railroad of such company incorporated under this law, upon such terms as may be agreed upon. And it shall be lawful for any railroad company or corporation, now or hereafter formed by the consolidation of one or more railroad companies, or corporations, organized under the laws of this state, or under the laws of this state and any other states, with one or more companies or corporations organized under the laws of any other state or under the laws of this and other states, to issue its bonds and stock as provided for in this article, in such amounts as they may deem necessary, for the purpose of paying or exchanging the same for or retiring any bonds or stocks theretofore issued by either of the said companies or corporations so merged, purchased or consolidated, or for any other purpose, and to the amount authorized by the laws of the state under which either of said companies or corporations so consolidated was organized, and to secure the same, in case of bonds, by mortgages or trust deeds upon its real or personal property, franchises, rights, and privileges, whether within or without this state; *Provided*, That no railroad company shall make any contract under the provisions of this section with any other railroad company which is a competing line that is calculated to defeat or lessen competition in this state or to encourage monopoly. Georgia code (1895), § 2179.

**Same. May lease or purchase other railroads.**—“Said railroad company shall have the power to make contracts with

any railroad company which has constructed or shall hereafter construct any railroad within this state, or any other state, that will enable said company to run their roads in connection with each other, and merge their stocks, or to consolidate with any such company within or without this state, or to lease or purchase the property of any other such company and hold, use, and occupy the same in such manner as they may deem most beneficial to their interest; *Provided*, That no railroad shall purchase a competing line of railroad, or enter into any contract with a competing line of railroad calculated to defeat or lessen competition in this state, and any violation of this section shall subject the corporation to all the penalties incident to such violation of the law." Code Ga. 1895 § 2173.

**Lessee subject to burdens of lessor corporations.**—All corporations, foreign or domestic, operating the franchise of a corporation chartered by this state are subject to its burdens, and can be sued when and where and for like causes for action for which suits could have been maintained against such other corporation were it in possession of the franchise so acquired or usurped. Code Ga. 1895, § 1863.

**Corporation liable, notwithstanding sale or lease.**—A corporation charged with a duty to the public cannot, by sale or otherwise, dispose of its property or franchises so as to relieve itself from liability for acts done or omitted, without legislative sanction expressly exempting it from liability. Code Ga. 1895, § 1864.

Lessor railroad liable for acts of lessee, although authorized by legislature to lease, but without express exemption from liability. 70 Ga., 464.

**Foreign corporations; how recognized in Georgia.**—Corporations created by other states or foreign governments are recognized in our courts only by comity, and so long as the same comity is extended in their courts to corporations created by this state. Code Ga., § 1846.

The existence of a corporation may be recognized in another state and there contracted with. 14 Ga., 328.

Proof of diploma of foreign medical corporation. 27 Ga., 76, 77.

By producing charter of such corporation. 59 Ga., 100.



Comity controls as to foreign corporation's right to sue here. 23 Ga., 448-458.

Montgomery & West Point Railroad sued in Georgia by one of her citizens, although the cause of action originated in Alabama. 39 Ga., 554.

Foreign corporation garnisheed for a debt it may owe anywhere in the state. 48 Ga., 351.

Specific performance cannot be enforced against a domestic corporation as to contract as to land to be performed in another state. 58 Ga., 323, 328.

Cannot recover lands in Georgia without showing power under foreign charter to hold lands. 66 Ga., 529.

Railroad company incorporated under act of 1876 not a foreign corporation. 72 Ga., 423.

Georgia railroad charter authorizing sale of franchises, foreign purchaser became domestic corporation. 74 Ga., 634.

Decree against corporation, appointing receiver to collect assessments of stock subscriptions, binding on nonresident subscriber. 85 Ga., 238.

**Same. What powers they may not exercise.**—No foreign corporation shall exercise within this state any corporate powers or privileges which, by the constitution or laws of Georgia, are denied or prohibited to corporations created by this state, or the exercise of which is contrary to the public policy of this state, anything in the charter or corporate powers of the foreign corporation to the contrary notwithstanding. Code Ga. 1895, § 1847.

**Same. Penalty.**—Whenever any foreign corporation shall exercise, or attempt to exercise, within this state any corporate power or privilege denied or prohibited to corporations created by this state by the constitution or laws of this state, or contrary to the public policy of this state, it shall be the duty of the courts to declare said corporate powers or privileges invalid and of no force or effect in this state, and to restrain or prohibit, by appropriate process, order, or judgment, the exercise of said corporate powers or privileges by said foreign corporation, at the instance of any party at interest, or at the instance of the attorney-general, when the latter shall be directed by the governor to proceed to that end in the name of the state. Code Ga., 1895, sec. 1848.

**Same. Ownership of land by foreign corporation**—Any foreign corporation or corporations incorporated by the laws

of any other state, and claiming to own lands in Georgia in quantity amounting to as much as five thousand acres, shall be incorporated by the laws of Georgia within twelve months after February 28, 1877; and on their failure to do so, the State of Georgia will not consent to the said corporation owning the said lands so located in her territory. And any foreign corporation incorporated by the laws of other states, who shall thereafter claim to own land in the State of Georgia in quantity amounting to five thousand acres or upwards, shall become incorporated by the laws of the State of Georgia, and in default thereof Georgia will not consent that said foreign corporation shall own said lands in her territory; and no foreign corporation incorporated by the laws of another state shall own more than five thousand acres of land except upon the condition of becoming a corporation under the laws of Georgia; *Provided*, That this section shall not apply to any foreign corporation, or any corporation incorporated by the laws of any other state, engaged in the business of lending money on real estate security, nor to any such corporation which, holding a lien upon real estate to secure the payment of any debt, when said corporation, in order to prevent loss, is compelled to become the purchaser of lands covered by deed or mortgage to secure a loan; *And provided, however*, That the benefits and privileges of the foregoing proviso shall not apply to any foreign corporation which does or may lend money in this state at a greater rate of interest than eight per cent. per annum. In estimating the amount of interest charged, there shall be included any and all commissions or fees which may be paid to said company or its duly authorized agents. Code Ga., 1895, sec. 1849.

Borrower cannot, by illegality to mortgage *fi. fa.*, question right of lender, a foreign corporation, to own more than five thousand acres. State alone can make the question. 87 Ga., 28.

**Same. Charter of foreign corporation, how far binding in Georgia.**—Where a foreign corporation does business in this state and relies upon provisions in its charter different from those imposed by the laws of this state, under similar circumstances, it must show that the opposite party had notice of such

provisions at the time the contract was made. Code Ga. 1895, § 1850.

**Railroads using the same terminal tracks.**—Two or more chartered railway companies, whose lines terminate in the same city, may, by contract, within the corporate limits, use the same track in common, with or without common ownership, and, when they do so, the company owning the track is not responsible to its employes for injuries sustained solely by reason of the negligent use of the track by the employes of the other company. Code Ga. 1895, § 1865.

**Common powers of corporations under Georgia law.**—All corporations have the right to sue and be sued, to have and use a common seal, to make by-laws, binding on their own members, not inconsistent with the laws of this state and of the United States; to receive donations by gift or will; to purchase and hold such property, real or personal, as is necessary to the purpose of their organization, and to do all such acts as are necessary for the legitimate execution of this purpose. Code (Ga.), 1895, sec. 1852.

Ordinance of a city regulating the sale of gunpowder is valid. 4 Ga., 509. A railroad corporation can make contract (17 Ga., 574). A by-law asserting a lien on the stock of the members is binding as between the corporators (1 Ga., 43). But a by-law infringing upon a valid statute relating to corporations is void (12 Ga., 404). City of Augusta has power to establish such by-laws as are necessary, and not repugnant to the constitution and laws (38 Ga., 542). Where by-law valid, but society could be controlled in its construction and enforcement (38 Ga., 608). Where no individual liability is created by the charter or general laws, a by-law of the corporation cannot impose it (40 Ga., 98.) When the execution of a mortgage by the agent of the corporation binds the corporation (25 Ga., 316). Agent can bind the corporation by note if acting within sphere of his powers, or there is after ratification of it by the principal (6 Ga., 166). Excursions as a matter of trade or business with the public, are not within the means or ends for which a church was incorporated (63 Ga., 186-194). Where a contract is beyond the scope of the corporate powers, no remedy can be had for damages for breach of (53 Ga., 625). Suing need not state how incorporated or aver that it is a corporation (53 Ga., 672). In suits to recover on subscription to stock, calls for should be clearly proved, but need not show that a certificate of stock has been tendered the subscriber (56 Ga., 230). Notice as to calls in relation to stock subscriptions (57 Ga., 314). By-laws control officers of, where they accept office and serve under such by-law known



to them (58 Ga., 240). See 87 Ga., 533. Members of company not liable as partners under summons of garnishment directed to corporation (69 Ga., 751).

Whether corporation (a bank) acted *ultra vires* in running iron works to collect debt due to bank, was fairly submitted to jury (74 Ga., 454). Defendant sued as corporation having pleaded as such, not prejudiced by incompetent parole proof that it was a corporation (88 Ga., 193). Corporation cannot, ordinarily, become member of partnership (74 Ga., 509; 75 Ga., 567).

### KENTUCKY ACTS AS TO LEASING.

[In Kentucky.] **Power of Nashville, Chattanooga & St. Louis Railway to lease its road, or to lease other roads in Kentucky.**—It must be borne in mind in discussing this subject, that the Nashville, Chattanooga & St. Louis Railway proper never extended into the state of Kentucky. It purchased the Nashville & Northwestern Railroad, which extended from Nashville, Tenn., to Hickman, Ky., and which road had been chartered by both the states of Tennessee and Kentucky [see p. 76 herein], and leased the Paducah, Tennessee & Alabama Railroad, a corporation of Kentucky [see p. 487 herein], but the line of the road constructed under its own charter never extended into Kentucky.

As to the line of the Nashville & Northwestern Railroad and the Paducah, Tennessee & Alabama Railroad, therefore, it is clear it has become a domestic corporation of Kentucky. 14 Minn., 303; 1 Wall., 40; 108 U. S., 436; 43 Mich., 354; 12 Wall., 65, 82; 90 Ga., 523; 76 Ga., 99; 9 Am. & Eng. R. R. C., 201; 53 Ala., 237; 21 Law Rep., 138; 3 Tenn. Chy., 602; 59 Ga., 263; 2 Woods, 409; 30 Fed. Cas., 73.

A railroad chartered by two states is a citizen of each. 118 U. S., 161; 1 Black (U. S.), 286; 32 W. Va., 164.

As to its main line, though no part of it ever extended into Kentucky, yet when the Paducah, Tennessee & Alabama Railroad was leased the Nashville, Chattanooga & St. Louis Railway complied with §§ 190, 570, 765, and 841 of the code of Ky. 1894, the provisions of which are set out further on in this chapter. It is probable that this domesticated the Nash-

ville, Chattanooga & St. Louis Railway proper in the state of Kentucky.

**Same. Power, as to its main line, to lease.**—If the Nashville, Chattanooga & St. Louis Railway is now a foreign corporation of Kentucky, which is extremely doubtful, as heretofore explained, reference must be had to the law of its organization, as well as to the general powers conferred upon it in the state of its creation, in determining its power to lease in Kentucky. Corporations acting beyond the jurisdiction that created them can do only those things which, by express grant or necessary implication, they are authorized or empowered to do by the laws of the state granting their charters. 36 Am. & Eng. R. R. Cases, 449; 74 Texas, 474; 8 S. W. Rep., 533, 35 Kan., 236; 10 Pac. Rep., 596; 24 Am. & Eng. R. R. Cases, 34; 3 Head (Tenn.), 337; 72 Ill., 50; 22 Am. Rep., 133; 29 Barb. (N. Y.), 650; Thompson on Corp., sec. 7920; 1 R. (Ky.), 8.

1. If it is a domestic corporation, then it can exercise, not only all the franchises of its charter, but those granted by the general laws of Kentucky.

2. It has been held, however, that a corporation authorized by an act of the general assembly of the state it desires to enter, to construct a portion of its road through the state, is entitled to the same rights and privileges as domestic corporations. 33 Pa. St., 175; 6 Watts & S. (Pa.), 101; 14 Pa. St., 65; 6 Whart. (Pa.), 45; 14 How. (U. S.), 80.

But a foreign corporation cannot by comity exercise powers within the state which a domestic corporation would be prevented from exercising under the constitution of the state. 52 Am. & Eng. R. R. Cases, 115; 50 Fed. Rep., 338.

Nor would it be permitted to do those things prohibited by statute.

It may be done, however, by express legal permit from the legislature.

It has been held in Kentucky that "the right to hold, and the mode of acquiring title to, land depends upon the *lex rei sitæ*; that, under the rules of comity, the presumption should be indulged that a corporation of one state, not forbidden by the law of its being, may exercise within any other state the general powers conferred by its charter, unless prohibited by direct enactment of the latter state or its public policy or settled adjudications." 1 R. (Ky.), 8.

From the foregoing, it will clearly appear that the power of the Nashville, Chattanooga & St. Louis Railway proper to lease its road or to lease other roads in Kentucky, whether it be treated as a foreign or domestic corporation of Kentucky, must largely depend on the powers it possesses in Tennessee. As it has heretofore been shown that it possesses those powers in Tennessee, it follows that it possesses them there, in the absence of any legal legislation to the contrary, which does not now exist, except as to parallel or competing lines. Code Ky. 1894, p. 139, § 201.

1. **Lease of part of line.**—If the power to lease exists, the power to lease a part of the line instead of the whole also exists. 111 N. Y., 1, 64; 83 Iowa, 720; 50 Ind., 85. See also, 77 N. Y., 232; 45 Cal., 365; 37 Ga., 644.

2. **Both roads must have power.**—In order to lease or sell a road, the lessor or vendor company must have power to lease or sell, and the lessee or vendee company must have power to accept the lease or to buy. 161 U. S., 686; 97 Ky., 675.

3. **Lease must be registered** in the secretary of state's office and in county clerk's office of every county in which said road, or any part thereof, lies. Code Ky. 1894, § 791.

**Same. Power to lease its purchased roads in Kentucky.**—The Nashville, Chattanooga & St. Louis Railway has purchased the Nashville & Northwestern Railroad (see p. 76, herein), which had in turn purchased the Hickman & Obion Railroad (see p. 77, herein), both of which were domestic corporations of Kentucky. It also purchased all their powers, rights, and franchises. In ascertaining, therefore, the power of the Nashville, Chattanooga & St. Louis Railway to lease those roads to other companies, regard must also be had to the law of the organization of said domestic companies as well as to the laws of Kentucky affecting them. In other words, as to the lines of those roads the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers and privileges, and subject to all the duties and liabilities, of the respective original companies. If the companies originally had the power to lease or sell, then the Nashville, Chattanooga & St. Louis Railway, as the legal owner of all the rights, powers, privileges, and franchises thereof, would also have that power as to those particular lines as fully and as completely as the original companies



had. *Rogers v. N., C. & St. L. Ry.*, decided November 9, 1898, by United States circuit court of appeals, sitting at Cincinnati, but which opinion has not yet been reported. See, also, 15 Lea (Tenn.), 37; 112 U. S., 610.

The same would be true of any other railroad it may purchase in Kentucky.

**Same. Power to sublease any road it may lease.**—The same would be true as to the lines of any roads the Nashville, Chattanooga & St. Louis Railway might lease in Kentucky if all their rights, powers, privileges, and franchises passed, in the absence of any clause in the lease prohibiting subleasing. Even should there be a clause, however, prohibiting subleasing, that would not prevent a mortgage or assignment of the entire leasehold interest, as that would be in no manner a violation of the covenant not to sublet. 27 Barb. (N. Y.), 415; 25 N. J. L. (1 Dutch), 291, 285; 33 N. J. L. (4 Vr.), 254; 47 Minn., 189; 15 L. R. A., 236; 16 Johns, 159; 1 Wood on Landlord & Tenant, secs. 258, 327; Taylor on Landlord & Tenant, sec. 16; 129 Ill., 318; 14 Lea (Tenn.), 92; 9 Lea, (Tenn.), 1.

**Foreign corporations, however, in Kentucky subject to laws relating to domestic corporations.**—"No corporation organized outside the limits of this state shall be allowed to transact business within the state on more favorable conditions than are prescribed by law to similar corporations organized under the laws of this commonwealth." Code Ky. 1894, p. 139; constitution, sec. 202.

**Lease or sale of franchise in Kentucky does not affect existing liabilities.**—No corporation shall lease or alienate any franchise so as to relieve the franchise or property held thereunder from the liabilities of the lessor or grantor, lessee or grantee, contracted or incurred in the operation, use or enjoyment of such franchise, or any of its privileges. Code Ky. 1894, p. 136; constitution of state, sec. 203.

**Foreign company in Kentucky denied right to hold real estate until it becomes a domestic corporation.**—No railroad corporation organized under the laws of any other state, or of the United States, and doing business, or proposing to do busi-

ness, in this state, shall be entitled to the benefit of the right of eminent domain or have power to acquire the right of way or real estate for depot or other uses, until it shall have become a body-corporate pursuant to and in accordance with the laws of this commonwealth. Code Ky. 1894, p. 141; constitution of state, sec. 211.

**Foreign corporations must be incorporated in Kentucky.—**

“No company, association, or corporation, created by or organized under the laws or authority of any state or country other than this state, shall possess, control, maintain, or operate any railway, or part thereof, in this state until, by incorporation under the laws of this state, the same shall have become a corporation, citizen, and resident of this state. Any such company, association, or corporation may, for the purpose of possessing, controlling, maintaining or operating a railway, or part thereof, in this state, become a corporation, citizen and resident of this state by being incorporated in the manner following, namely: By filing in the office of the secretary of state, and in the office of the railroad commission, a copy of the charter or articles of incorporation of such company, association or corporation, authenticated by its seal and by the attestation of its president and secretary, and thereupon, and by virtue thereof, such company, association, or corporation shall at once become and be a corporation, citizen and resident of this state. The secretary of state shall issue to such corporation a certificate of such incorporation.” Code (Ky.), 1894, § 841.

1. See notes to second section below.

2. Section 842 of Code of Kentucky, 1894, provides a penalty for violation of above section of not less than \$1,000 for each day or part thereof so violated.

**Foreign companies must accept constitution of Kentucky; when.—**“No railroad corporation organized or created by or under the laws of any other state shall have the right to condemn land for, or acquire the right of way for, or purchase or hold land for its depots, tracks, or other purposes, until it shall have first filed in the office of the secretary of state of

this state, in the manner provided in the first article of this chapter, its acceptance of the constitution of this state, and shall have become organized as a corporation under the laws of this state, which it may do by filing in the offices of the secretary of state and the railroad commission articles of incorporation, in the manner and form provided in section 763 of this article (acceptance of constitution, see § 570 of this code). Code (Ky.), 1894, § 765.

See notes to section below.

**Same.**—“No law shall be passed for the benefit of, or in the interest of, any corporation heretofore created or organized by or under the laws of this state or any other state, nor shall any corporation avail itself of the provisions of this chapter, unless such corporation shall have previously, by a resolution adopted by its board of directors and filed in the office of the secretary of this state, accepted the provisions of the constitution of this state, and such resolution, or a certified copy thereof, shall be evidence for and against such corporation.” Code Ky. 1894, § 570.

**Above sections complied with in leasing Paducah, Tennessee & Alabama Railroad.**—After the lease of the Paducah, Tennessee & Alabama Railroad (see p. 487 herein) by the Nashville, Chattanooga & St. Louis Railway, the secretary of state of Kentucky held that, under sec. 190 of the constitution of the state, and under §§ 570, 765, and 841 of the code of Kentucky above set out, the said road could not be legally operated until all of said sections were strictly complied with. In this he was clearly wrong, as only § 841, above set out, is necessary to be complied with. However, to avoid trouble, the board of directors of the Nashville, Chattanooga & St. Louis Railway, on January 21, 1899, accepted the constitution of Kentucky, and filed a copy of the same, with its charter properly authenticated and attested, with the secretary of state, and Railroad Commissioners, on February 25, 1899. The charter, properly authenticated and attested, had been offered for filing several months previously, but was refused by the secretary of state upon the ground that the directors of the railroad had not accepted the constitution of Kentucky.



## CHAPTER LXXI.

*MORTGAGES—WHAT MAY BE MORTGAGED—VOTE NECESSARY—  
POWER TO, GENERALLY.*

[For rights of, and what passes to, purchaser under foreclosure of, see  
“Sales;” “Purchase.”]

[In Tennessee.] **Right of railways to mortgage their property, generally.**—A very clear line of distinction is drawn between strictly private corporations and those devoted to the discharge of public duties, in so far as their right to mortgage their property is concerned. The American doctrine recognizes the implied power in private corporations to borrow money for its corporate purposes, to issue evidences of debt therefor, and, by necessary implication, to mortgage its property to secure said debts. Not so, however, with railways. They have ordinarily no power to mortgage, lease, or otherwise alien their property and franchises, such as are necessary to the performance of those duties, without express legislative authority. Many authorities go to the extent of holding that this rule applies to all corporations devoted to the discharge of public duties. The Tennessee courts do not go so far, as they have held that a gaslight company could mortgage its property without express legislative authority. 11 Pick., 142.

The rule is held, however, to apply to railways. Thompson on Corp., sec. 6137; 88 Tenn., 138, 152; 40 Am. & Eng. R. R. Cases, 358; 101 U. S., 71; 34 Vt., 484; 36 Vt., 452; 10 Allen (Mass.), 448, s.c. — Am. Dec., 672; 11 Allen (Mass.), 65; 87 Am. Dec., 700; Jones on Corp. Bonds & Mortgages, sec. 3; 65 N. Y., 43, 50; 32 N. H., 484; 15 Ohio St., 21; 40 Mo., 140; 27 Miss., 517; Elliott on Railroads, sec. 488; 118 Mass., 543; 61 Ill., 422; 152 U. S., 191. See also 6 Heis. (Tenn.), 421.

It has been held, however, that this rule does not apply to property not necessary to enable the corporation to perform its

duties to the public. 99 U. S., 48, 57; 22 Wall., 527; Elliott on Railroads, sec. 488.

We will now examine the charter, amendments thereto, and the general law of Tennessee, to see what authority the Nashville, Chattanooga & St. Louis Railway has to mortgage its property in Tennessee.

**What power exists in the charter of the Nashville, Chattanooga & St. Louis Railway to mortgage.**—There is no direct power given in the charter, or amendments thereto, authorizing the execution of a mortgage. The only clause that could, in any way, be construed into such authority is in section 1 of the charter, which, among other things, provides: "The Nashville & Chattanooga Railroad Company shall be capable in law to buy, receive by gift, hold, sell, and convey real and personal estate," etc.

In many of the states this power to sell and convey by implication gives the power to mortgage. Jones on Corp., Bonds and Mortgages, sec. 7, 119 U. S., 191. But this has been held only to apply to the property as distinguished from the franchises of the company. *Id.* 3 Woods, 481; 2 Kelly (Ga.), 383.

The word "convey" in the above section of the charter evidently contemplates a different disposition from the word "sale," which, by inference, might mean mortgage. Thus, in a similar case, it was held that, where the charter of a railway authorized it to "dispose of" its lands, etc., it might mortgage them. 99 U. S., 48.

**What power exists under the general law.**—Whatever may be the construction placed upon the charter provision above referred to, when tested, there can be no doubt but that under the general law the railway now has the right to mortgage its property.

The following acts of the state of Tennessee relating to mortgages, are set out in the order of their passage:

1. **May mortgage their property; when; not to interfere with state's lien.**—Any railroad company in this state may issue bonds in such amounts, and bearing such rate of interest,

not exceeding the legal rate of interest at the place where payable, as may be determined on by the stockholders representing a majority of all the stock in the company, and may secure the payment of such bonds principal, and interest by mortgage of the franchises, roadbed, superstructures, equipments, and property of every description of such railroad company. The mortgage above authorized shall not interfere with prior liens, especially the liens of the state in the existing mortgages in favor of the state. Acts Tenn., 1870-71, ch. 116, sec. 1; code Tenn. [Shannon's], § 1541; [M. & V.], § 1276.

2. **Further on the subject.**—Every railroad corporation in this state, whether created under a general or special law, “shall have the power to borrow money and to issue its bonds therefor, or for any other indebtedness or liability which it may incur or may have incurred, in the exercise of its lawful purposes, and to secure the payment of such bonds, with the interest thereon, by a mortgage of the whole or any part of its railroad and equipments and other property and franchises, containing such provisions as its directors shall approve. Acts Tenn. 1871, ch. 69; code Tenn. [Shannon's], § 1510; (M. & V.), § 1251.

3. **Further on the same subject.**—Railroad companies existing under the laws of this state, or of this state and any other state or states, whose original charter of incorporation was granted by this state, are empowered to issue bonds, and secure the payment thereof by mortgage upon their franchises and property in any state or states, or upon any part of such franchises and property, or to issue income or debenture bonds, and such guaranteed, preferred, and common stock as may be determined upon by the stockholders; *Provided*, The same be approved by the votes of the holders of three-fourths in amount of the entire stock of said company, at a regular or called meeting of the stockholders of said company, and that sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of the meeting. Acts Tenn., 1881, ch. 9, sec. 1; Code Tenn. [Shannon], § 1542; [M. & V.], § 1277.



The supreme court of Tennessee has decided that this act does not repeal the special limitations imposed by the Acts of Tenn., 1877, ch. 72, upon the power of consolidated railway companies to make mortgages of their property. 4 Pick. (Tenn.), 140.

**4. The next act relating to corporate mortgages** was passed by the legislature of 1885, p. 103, but the act itself specifically provided that it should not apply to railroads, and hence it is omitted here.

**Mortgage not to affect certain judgments, etc., when.**—No railroad company shall have power to give or create any mortgage or other kind of lien on its railway property in this state, which shall be valid and binding against judgments and decrees, and executions therefrom for timbers furnished and work and labor done on, or for damages done to persons and property in the operation of its railroad in this state. Acts Tenn., 1877, ch. 72, sec. 3; ch. 12, sec. 3; code Tenn. (Shannon's), § 1530; (M. & V.), § 1271.

This section is constitutional, and is not repealed by acts Tenn., 1881, ch. 9, sec. 1, as codified in the code (Shannon's) as § 1542, and which section has heretofore been set out. 4 Pick., 150-163, 167.

This lien continues after damage to person agreed upon. 4 Pick. (Tenn.), 146-149.

It protects creditors for personal injuries without judgment when. 4 Pick. (Tenn.), 144, 145.

**Who to authorize, directors or stockholders, in Tennessee, and vote necessary.**—It is a general principle of law that the directors of a corporation, in the absence of any legislative restriction, are the ones to authorize a mortgage, and not the stockholders. 93 Ill., 153; 30 Vt., 149; 14 Allen, 381; 13 Pick., 291; 7 Fed. Rep., 793; 68 Ala., 229; 65 Pa. St., 290; 35 Mo., 13; 68 Miss., 423; Elliott on Railroads, sec. 491.

In Tennessee, under the acts of 1870-71, ch. 116, heretofore set out, it was provided that the mortgage should be approved by a majority of all the stockholders in the company.

The acts of Tenn., 1871, ch. 69, does not refer to stockholders, but leaves the matter to the directors.

The acts of Tenn., 1881, ch. 9, require that the same be approved by the votes of the holders of three-fourths in amount

of the entire stock of said company, at a regular or called meeting of stockholders, and that sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper, of the time, place, and purpose of the meeting.

This latter act should be followed, though it is open to many objections from a constitutional standpoint on account of its caption. This is advised, as, by so doing, the other acts will also be complied with. The acts of 1881, ch. 9, however, were incidentally passed upon in 4 Pick. (Tenn.), 140, and no notice taken of irregularities in caption.

**After acquired property may be mortgaged.**—Though no statute law authorizes the mortgage of after acquired property in Tennessee, yet it is well recognized that a power to mortgage property generally, in the absence of restraining statutes, of itself confers the power upon a railway company to mortgage property to be by it thereafter acquired, and such a mortgage will cover property of which the company acquires either the legal or equitable title. 138 U. S., 414; Thompson on Corp., sec. 6141; 1 Wall. (U. S.), 254; 58 Ala., 489; 72 Me., 83; 46 Conn., 156; 146 U. S., 536; 15 Ohio St., 523; Elliott on Railroads, sec. 497; 104 U. S., 25; 64 Ala., 122, 603; Shannon's Tenn. Cases, p. 774; 94 Ga., 306; Cook on Corp. (4th ed.), sec. 857; 132 U. S., 68; 164 U. S., 1, 15; 95 U. S., 11; 94 N. Y., 160; 64 Pa. St., 366; 36 Fed. Rep., 288; 147 U. S., 431; 138 U. S., 414; 65 N. Y., 43, 51.

In Tennessee it has been held that such a mortgage was valid, and that the trustee would in equity have a lien upon the after-acquired property, if it should come into his hands, subject to the liens that may have fastened upon the property before it came into his possession—as, for instance, where the property had been attached before it reached the mortgagee or trustee. 6 Heis. (Tenn.), 421. See, also, 7 Bax., 98; 23 Ill., 324.

**Future earnings may be mortgaged.**—For the same reason a railway having the general power to mortgage may pledge or mortgage its future net earnings, to raise money for equipping or constructing its road or other property. 26 Ill., 121; 123

U. S., 687; 11 Iowa, 572; 79 Am. Dec., 513; Thompson on Corp., sec. 6148; 91 U. S., 603; 81 Ill., 534; 124 Mass., 154; 51 Me., 341; Elliott on Railroads, sec. 495; Shannon's Tenn. Cases, p. 774.

By acts of Tenn. 1881, ch. 9, sec. 1, all railway companies existing under the laws of this state, or of this state and any other state or states, whose original charter of incorporation was granted by this state, were empowered to issue income or debenture bonds.

In Tennessee it has been held that, where the net earnings of a railroad are mortgaged, the lien of the mortgage does not attach until the net earnings are ascertained and set apart to the mortgagee, and, until this is done, the gross earnings are liable to be attached by the creditors of the railroad company. 6 Heis. (Tenn.), 421.

**May mortgage leased roads.**—Where the power to mortgage exists the entire leasehold interest in any road may be mortgaged. This would be so even though there be a clause in the lease prohibiting subleasing. Such a clause would not prevent a mortgage or assignment of the entire leasehold interest, as it has uniformly been held that this is in no manner a violation of a covenant not to sublet. 27 Barb. (N. Y.), 415; 25 N. J. L. (1 Dutch.), 291, 285; 33 N. J. L. (4 Vr.), 254; 47 Minn., 189; 15 L. R. A., 236; 16 Johns., 159; 1 Wood on Land. and Tenant, sec. 258, 327; Taylor on Land. and Tenant, sec. 16; 129 Ill., 318; 14 Lea (Tenn.), 92; 9 Lea (Tenn.), 1.

**May mortgage personal property and rolling stock.**—Cook on Corp. (4 ed.), secs. 852, 854.

**May mortgage a part of its road.**—It is generally conceded that if a railroad company has power to mortgage its road it has power to mortgage a part of it. 20 Fed. Cas., 32; 85 Pa. St., 501. In the latter case it was also held that where a railroad company mortgages such part of its road as is completed, and the mortgage is foreclosed, the purchasers are not bound to go on and complete the road. See also Cook on Corp. (4 ed.), sec. 786; Elliott on R. R., sec. 489.



## ALABAMA ACTS AS TO MORTGAGING.

[In Alabama.] **Power of the Nashville, Chattanooga & St. Louis Railway to mortgage its road in Alabama.**—In discussing this it is necessary to bear in mind that as to its main line the Nashville, Chattanooga & St. Louis Railway is a foreign corporation in Alabama, though as to the lines of those Alabama railroads it has purchased it is a domestic corporation there. A corporation is not incorporated in a foreign state simply by the purchase or lease of a domestic railroad of that state. Elliott on Railroads, sec. 26; 1 Hilton (N. Y.), 62; 30 N. J. L., 473; 31 N. J. L., 531; 32 Ohio St., 468; 50 Pa. St., 26. See, however, 85 Tenn., 189: But it would be domesticated as to the lines of roads so purchased, and, hence, no suit growing out of the operation of a road so purchased could be removed to the federal court on the ground of “nonresidents.” 108 U. S., 436; 14 Minn., 303; 43 Mich., 354; 1 Wall., 40; 12 Wall., 65, 82. See, also, 90 Ga., 523; 76 Ga., 99; 9 Am. & Eng. R. R. Cases, 201; 53 Ala., 237; 21 Law Rep., 138; 3 Tenn. Ch., 602; 59 Ga., 263; 2 Woods, 409; 30 Fed. Cases, 73.

A railroad chartered by two states is a citizen of each. 118 U. S., 161; 76 Ala., 388.

It is true the state of Alabama authorized the Nashville, Chattanooga & St. Louis Railway to build its main line in that state, and conferred upon it “all the rights, privileges, immunities,” etc., of its Tennessee charter. (See p. 55, *et seq.*, herein.) But this did not domesticate the main line of the Nashville, Chattanooga & St. Louis Railway in Alabama, nor did its subsequent purchase of the Tennessee & Coosa Railroad, the Middle Tennessee & Alabama Railroad, or the Huntsville & Elora Railroad. 32 Fed. Rep., 849; 21 Fed. Rep., 817; 20 Am. & Eng. R. R. Cases, 597; 22 Fed. Rep., 353; 46 Mich., 224; 76 Ala., 388; 13 Am. & Eng. R. R. Cases, 296; 23 Am. & Eng. R. R. Cases, 487; 49 N. J. L., 193; 129 Pa. St., 463; 18 Alt. Rep., 412. See, also, 118 U. S., 290; 104 U. S., 5.

**Same. Power as to its main line to mortgage.**—The Nashville Chattanooga & St. Louis Railway proper being a foreign

corporation in Alabama, as heretofore explained, reference must be had to the law of its organization, as well as to the general powers conferred upon it in the state of its creation in determining its power to lease in Alabama. Corporations going beyond the jurisdiction that created them can generally do only those things which by express grant or necessary implication they are authorized or empowered to do by the laws of the state granting their charters. 36 Am. & Eng. R. R. Cases, 449; 74 Texas, 474; 8 S. W. Rep., 533; 35 Kan., 236; 10 Pac. Rep., 596; 24 Am. & Eng. R. R. Cases, 34; 3 Head (Tenn.), 337; 72 Ill., 50; 22 Am. Rep., 133; 29 Barb. (N. Y.), 650; Thomp. on Corp., sec. 7920; 1 R. (Ky.), 8.

1. Some of the states hold, however, that a foreign corporation authorized by an act of the assembly of the state it desires to enter to construct a portion of its road through the state, is entitled to the same rights and privileges as domestic corporations. 6 Watts & S. (Pa.), 101; 33 Pa. St., 175; 14 Pa. St., 65; 6 Whart. (Pa.), 45; 14 How. (U. S.), 80.

2. But a foreign corporation cannot by comity exercise powers within a state which a domestic corporation would be prevented from exercising under the constitution of the state. 52 Am. & Eng. R. R. Cases, 115; 50 Fed. Rep., 338.

3. It may be done, however, by express legal permit from the legislature.

As it has been shown in the first part of this chapter that the Nashville, Chattanooga & St. Louis Railway possessed the power to mortgage in Tennessee, it would possess that power in Alabama, in the absence of any legislation to the contrary.

**Same. Alabama decisions on subject.**—The courts of Alabama have gone farther in conceding implied powers to railroad companies to mortgage their property than most states. Thus it has been held that, in the absence of statutory limitation, a railroad company has implied power to borrow money for the purpose of properly conducting its business, and to mortgage its property to secure the payment of the loan. 117 Ala., 680; 62 Ala., 555; 15 Ala., 472; 11 Ala., 437; 58 Ala., 489.

There are no statutes on the subject in Alabama.

**Power to mortgage purchased roads of Alabama.**—Where roads are purchased in Alabama, together with all their rights, powers, privileges, and franchises, regard must also be had to

their organic law, as well as the laws of Alabama affecting them, in ascertaining the power to mortgage them. In other words, as to the line of such roads, the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers and privileges, and subject to all the duties and liabilities, of said original companies. If they had power to mortgage, then the Nashville, Chattanooga & St. Louis Railway would also possess it, as to those particular lines, in as full and complete a manner as the original companies had. *Rogers v. N., C. & St. L. Ry. et als.*, decided November 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which case has not as yet been reported. See also 15 Lea (Tenn.), 37; 112 U. S., 610.

1. **Power to mortgage leased roads.**—The same rule would apply to leased roads, even in the face of a clause in the lease prohibiting subleasing, as the mortgage or assignment of the entire leasehold interest is in no manner a violation of a covenant not to sublet. 27 Barb. (N. Y.), 415; 25 N. J. L. (1 Dutch), 291, 285; 33 N. J. L. (4 Vr.), 254; 47 Minn., 189; 15 L. R. A., 236; 16 Johns, 159; 1 Wood on Land & Tenant, secs. 258, 327; Taylor on Land & Tenant, sec. 16; 129 Ill., 318; 14 Lea (Tenn.), 92; 9 Lea (Tenn.), 1.

2. **Rolling stock.**—Is a chattel personal, and is not converted into realty by being put upon the railroad. 53 Ala., 237. It may be mortgaged, however.

## GEORGIA ACTS AS TO MORTGAGING.

[In Georgia.] **Power of Nashville, Chattanooga & St. Louis Railway to mortgage its road in Georgia.**—In the discussion of this subject it is necessary to bear in mind that as to its main line the Nashville, Chattanooga & St. Louis Railway is a foreign corporation in Georgia, though as to the lines of those Georgia railroads it has purchased or leased it is a domestic corporation there. A corporation is not incorporated in a foreign state simply by the purchase or lease of a domestic railroad of that state. Elliott on Railroads, sec. 26; 1 Hilton (N. Y.), 62; 30 N. J. L., 473; 31 N. J. L., 531; 32 Ohio St., 468; 58 Pa. St. 26. See, however, 85 Tenn., 189; but it would be domesticated as to the line of the road so purchased or leased, and hence no suit growing out of the operation of



the line so purchased could be removed to the federal court upon the ground of "nonresidence." 108 U. S. R., 436; 14 Minn., 309; 43 Mich., 354; 1 Wall., 40.; 12 Wall., 65, 82; see also 90 Ga., 523; 76 Ga., 99; 9 Am. & Eng. R. R. Cases, 201; 53 Ala., 237; 21 Law Rep., 138; 3 Tenn. Chy., 602; 59 Ga., 263, and 74 Ga., 634, which latter case was reversed by federal court; 2 Woods, 409; 30 Fed. Cases, 73.

A railroad chartered by two states is a citizen of each. 118 U. S., 161.

It is true, the state of Georgia authorized the Nashville, Chattanooga & St. Louis Railway to build its main line in that state, and conferred upon it "all the rights, privileges, and immunities," etc., of its Tennessee charter (see p. 55, *et seq.*, herein), but this did not domesticate the main line of the Nashville, Chattanooga & St. Louis Railway in Georgia, nor did its subsequent purchase of the Rome Railroad. 32 Fed. Rep., 849; 21 Fed. Rep., 817; 20 Am. & Eng. R. R. Cases, 597; 22 Fed Rep., 353; 46 Mich., 224; 76 Ala., 388; 13 Am. & Eng. R. R. Cases, 296; 23 Am. & Eng. R. R. Cases, 487; 49 N. J. L., 193; 129 Pa. St., 463; 18 Atl. Rep., 412; see also 118 U. S., 290; 104 U. S., 5.

**Same. Power to mortgage its main line in Georgia.**—The Nashville, Chattanooga & St. Louis Railway proper being a foreign corporation in Georgia, as heretofore explained, reference must be had to the law of its organization, as well as to the general powers conferred upon it in the state of its creation in determining its power to mortgage in Georgia. Corporations acting beyond the jurisdiction that created them can ordinarily do only those things which, by express grant or necessary implication, they are authorized or empowered to do by the laws of the state granting their charters. 36 Am. & Eng. R. R. C., 449; 74 Texas, 474; 8 S. W. Rep., 533; 35 Kan., 236; 10 Pac. Rep., 596; 24 Am. & Eng. R. R. C., 34; 3 Head (Tenn.), 337; 72 Ill., 50; 22 Am. Rep., 133; 29 Barb. (N. Y.), 650; Thompson on Corp., § 7920; 1 R. (Ky.), 8.

It has been held, however, that a foreign corporation authorized by an act of the assembly of the state it desires to enter, to construct a portion of its road through the state, is entitled to the same rights and privileges

as domestic corporations. 33 Pa. St., 175; 6 Watts & S. (Pa.), 101; 14 Pa. St., 65; 6 Whart. (Pa.), 45; 14 How. (U. S.), 80.

But a foreign corporation cannot, by comity, exercise powers within the state which a domestic corporation would be prevented from exercising under the constitution of the state. 52 Am. & Eng. R. R. Cas., 115; 50 Fed. Rep., 338.

See §§ 1847-50 of Code Gal. 1895. on this line, farther on in this chapter. It may be done, however, by express legal permit from the legislature.

From the foregoing it will clearly appear that the power of the Nashville, Chattanooga & St. Louis Railway proper to mortgage its road, or to mortgage purchased roads in Georgia, must largely depend on the powers it possesses in Tennessee. As it has heretofore been shown that it possesses those powers in Tennessee, it would follow that it possesses them there in the absence of any legal legislation to the contrary, which does not now exist.

1. **After acquired property may be mortgaged in Georgia.** 42 Ga., 133; 96 Ga., 580.

2. **Power to mortgage gives power to mortgage part of road instead of whole.** 85 Pa. St., 501-6; 10 Allen (Mass.), 459; Elliott on Railroads, sec. 489.

**Same. Power to mortgage its purchased or leased roads.**—The Nashville, Chattanooga & St. Louis Railway has purchased the Rome Railroad (see p. 379, herein), a corporation of Georgia, together with all its rights, privileges, and franchises. In ascertaining the power of the said Nashville, Chattanooga & St. Louis Railway to mortgage that road to another company, regard must also be had to the law of the organization of the Rome Railroad Company as well as the laws of Georgia affecting it. In other words, as to the line of that road, the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers and privileges, and subject to all the duties and liabilities, of the original company. If the Rome Railroad Company originally had the power to mortgage or sell, then the Nashville, Chattanooga & St. Louis Railway would have that power as to that particular line as fully as the original company had. *Rogers v. N., C. & St. L. Ry.*, decided No-

vember 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which opinion has not yet been reported. See, also, 15 Lea (Tenn.), 37; 112 U. S., 610.

The same would be true of any other railroad it may purchase in Georgia.

The same would be true as to the lines of any roads the Nashville, Chattanooga & St. Louis Railway might lease in Georgia if all their rights, powers, privileges, and franchises passed. Even where there is a clause prohibiting subleasing (as was done in the lease to the Western & Atlantic Railroad), a mortgage or assignment of the entire leasehold interest is in no manner a violation of a covenant not to sublet. 27 Barb. (N. Y.), 415; 25 N. J. L. (1 Dutch), 291, 285; 33 N. J. D. (4 Vr.), 254; 47 Minn., 189; 15 L. R. A., 236; 16 Johns, 159; 1 Wood on Landlord & Tenant, secs. 258, 327; Taylor on Landlord & Tenant, sec. 16; 129 Ill., 318; 14 Lea (Tenn.), 92; 9 Lea (Tenn.), 1.

**Railroads chartered under general laws of Georgia; may mortgage; how.**—Said railroad companies shall be empowered “to borrow such sum or sums of money, at such rates of interest and upon such terms as such company, or its board of directors, shall deem necessary or expedient, and may execute one or more trust deeds or mortgages, or both, if the occasion may require, on said railroad in progress of construction, or after the same has been constructed, for the amounts borrowed, or owing by such company. Said company may make such provisions in such trust deed or mortgage for transferring said railroad track, depots, grounds, rights, privileges, franchises, immunities, machine-houses, rolling-stock, furniture, tools, implements, appendages and appurtenances used in connection with said railroad, in any manner then belonging to said company, or which shall thereafter belong to it, as security for any bonds, debts or sums of money secured by such trust, deeds or mortgages, as they shall think proper; and all such deeds of trust and mortgages shall be recorded, as is provided by law for the record of mortgages in this state, in each county through which said road runs, but all rights to borrow money,



issue bonds, or other evidences of debt, and to execute trust, deeds or mortgages to secure the same, shall be exercised within the limitations and in the manner which shall be prescribed by the law of this state. Code Ga., 1895; § 2167 (10).

1. See discussion of subject generally under Tennessee law in first part of this chapter.

2. **After acquired property may be mortgaged.**—94 Ga., 306; 96 Ga., 580; 42 Ga., 133.

3. **Authority to execute mortgage.**—Must be conferred by act of directors where organic statute requires it. 91 Ga., 624.

4. **Foreign mortgage.**—On lands in Georgia is security only. 36 Ga., 138.

5. If valid where executed, valid everywhere. 76 Ga., 178.

6. **Future acquired property.**—May be mortgaged by railroads. 94 Ga., 319.

### KENTUCKY ACTS AS TO MORTGAGING.

[In Kentucky]. **Power of Nashville, Chattanooga & St. Louis Railway to mortgage its purchased and leased roads in Kentucky.**—The power of the Nashville, Chattanooga & St. Louis Railway to mortgage its purchased and leased roads in Kentucky depends upon substantially the same principles as its power to lease them. As this latter subject has been gone into fully in the preceding chapter on leases, p. 856, herein, it will not again be discussed, but reference is made thereto.

As the Nashville, Chattanooga & St. Louis Railway possesses the power to mortgage in Tennessee, it would possess it in Kentucky, in the absence of any legislation to the contrary, which does not now exist.

Thompson, in his work on corporations, in speaking of the power of foreign corporations to mortgage their roads, says: “The *jus disponendi* being a universal incident of the beneficial ownership of property, whenever the power of a foreign corporation to acquire land is conceded, the power to dispose of it must also follow; and that foreign corporations have the same power to mortgage, or otherwise incumber their property that domestic corporations or natural persons would have, 101 Ill., 206; though the legislature of the state in which the lands are situated may, and sometimes does, restrain the exercise of the

power, whenever to follow its exercise will prejudice the rights of its own citizens as creditors of the corporation. But in respect of the mode in which the conveyance is made, the local law governs; though the question whether the directors have received power from the stockholders to authorize the mortgage must be determined by reference to the charter, governing statute, or by-laws of the corporation. For instance, it has been held in Massachusetts that a statute of that state, providing that a corporation shall not convey or mortgage its real estate, or give a lease therefor for more than a year, unless authorized by a vote of the stockholders at a meeting called for the purpose, does not apply to foreign corporations, nor invalidate a mortgage made by a New Hampshire corporation of its lands situated in Massachusetts, where there has been no such vote of the stockholders." 147 Mass., 224; 17 N. E. Rep., 316; Thompson on Corp., § 7923.

**Mortgages in Kentucky not opposed to public policy.**—A mortgage by a railroad company to secure money borrowed for the construction of its road is not opposed to the public policy of the state. This is indicated by the general course of legislation upon the subject. 4 Mete. (Ky.), 199; see also 95 Ky., 289; 15 R. (Ky.), 785.

**Power to mortgage** gives power to mortgage a part instead of the whole of a railroad. 85 Pa. St., 501-6; 10 Allen (Mass.), 459; Elliott on R. R., § 489.

**Railroads chartered under general acts of Kentucky may mortgage their roads; how.**—Corporations organized under this law shall have power to borrow such sums of money as may be necessary for funding their floating debt or for completing, equipping, or operating their road, or any part thereof, or for paying any debts incurred for such purposes, and to issue and dispose of their bonds or obligations for any amounts necessarily borrowed for such purpose, and to mortgage their corporate property and franchises, or any part thereof, to secure the payment of any debt contracted, or to defray any expenditure for the purposes aforesaid, and may confer on any holder of such bonds or obligations the right to convert the

same into the stock of such company; and may, in the manner provided in article I. of this chapter, increase or decrease its capital stock, and the increased stock may be "common" or "preferred," as shall be designated in the call for the meeting of the stockholders. If preferred stock be issued, the company may guarantee to the holders thereof semi-annual or quarterly dividends to an amount not exceeding six per cent. per annum, payable at its office or at such other places as the directors may designate. The stock may be sold at such time and place, either within or without the state, as may be deemed advisable, and the proceeds thereof applied for the purposes for which it was issued. The unpreferred stock of the company shall be entitled to dividends only out of the surplus of the profits, after setting apart a sum sufficient to pay the dividends upon the preferred stock; and the company which issues such preferred stock shall reserve the privilege of redeeming and canceling the same at par at any time after three years from the date of its issue, and the preferred stock herein provided for may be convertible into bonds of the company at the option of the parties. Code Ky. 1894, § 771.

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## CHAPTER LXXII.

### *PRESIDENT—HOW CHOSEN, QUALIFICATIONS, POWERS, ETC.*

**How president chosen.**—The president of this company shall be elected by the directors from among their own members in such manner as the regulations of the corporation shall prescribe. Charter, sec. 8, p. 6 herein.

The by-laws provide that the board of directors shall elect a president from their board (see p. 646 herein), the election to be by ballot unless by unanimous consent (see p. 647 herein).

**Qualifications.**—No person but a citizen of the United States, and being a *bona fide* stockholder in his own right of at least forty shares, which he shall have held at least three months previous to his election (except at the first election),



shall be president or a director of the company; nor shall any stockholder vote in person or by proxy at any general or other election (except the first) who shall not have held in his own right the shares on which he offers to vote at least three months previous to such election. Charter, sec. 19, p. 12 herein.

**Pro tempore president.**—The board of directors may fill up all vacancies which may occur in it during the period for which their board shall have been elected, and, in the absence of the president, may fill his place by electing a president *pro tempore*. Charter, sec. 10, p. 8 herein.

The by-laws of the company provide likewise. See pp. 646, 647 herein.

**Powers of president.**—Generally speaking it is impossible to formulate any definite legal rules within which to prescribe the powers of a railway president. From the nature of the business to be transacted, requiring as it does constant attention, and which of necessity must be done promptly and effectively without calling together the board of directors, a liency is manifested by the courts to recognize implied powers, which do not exist in presidents of other corporations, such as manufacturing, mining, educational, etc.

Generally speaking, it may be said that a railway president may act for the company in all ordinary routine business, unless his powers are circumscribed and limited by the act of incorporation or the corporate by-laws. Elliott on Railroads, sec. 283.

The by-laws provide that he shall have general supervision and direction of all departments of the company's service. See p. 649 herein.

Of course the board of directors may materially extend the general powers of the president and invest him with authority much beyond that inherent in his office: and, again, his powers may be extended by corporate usage or custom, the discussion of which would require too much time for the space here allotted. The by-laws set out certain powers of the president, general manager, etc., but by usage and custom these powers may be materially enlarged.

**Same. May call meeting of directors, when.**—Under the by-laws of the company the president may call special meetings of the directors and committees at such times as he may deem proper. See p. 649 herein.

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## CHAPTER LXXIII.

### *PURCHASE—POWER TO PURCHASE OTHER ROADS, REAL ESTATE, ROLLING STOCK, BRIDGES, ETC.*

[In Tennessee.] **Right to purchase real and personal estate.**—Under its charter of the Nashville, Chattanooga & St. Louis Railway, the company has the right to buy, receive by gift, hold, sell, and convey real and personal estate as thereafter provided. Charter, sec. 1, p. 1 herein.

**Right to purchase lands, etc., for depositories, storehouses, workshops, materials, etc.**—Under its charter the company may purchase, have and hold in fee, or for a term of years, any lands, tenements, hereditaments which may be necessary for said road, or appurtenances thereof, or for the erection of depositories, storehouses, houses for the officers, servants, or agents for the company, or for workshops or foundries to be used for said company, or for procuring timber, stones, or other materials necessary for the construction of the road or its appurtenances, or for effecting transportation thereon. Charter, sec. 21, p. 13, herein.

The supreme court has held, in construing this section of the charter, in conjunction with the sections on eminent domain, that for the purposes enumerated in the above section the railway company could not condemn the land necessary, but must rely on negotiation with the owners thereof, as allowed in said section. 11 Hum. (Tenn.), 348.

**Right to purchase bridges and turnpikes.**—Under its charter the company may also purchase, have and hold any bridge or turnpike road over which it may be necessary to carry the said railroad; and when such purchase is made, to hold the said bridge or turnpike road on the same terms and with all

the rights which belong to the individual, individuals, or corporation from which such purchase may be made; *Provided*, That the said company shall not obstruct any public road without constructing another as convenient as may be. Charter, sec. 23, p. 14, herein.

See notes under sec. 23 of the charter.

**Right to purchase other railways.**—It is a well established principle of law that, in order to render the sale of a railway to another valid, the purchasing road must have the power to buy conferred either in its charter, amendments thereto, or by the general law, and the vendor road must have equal authority to sell. 161 U. S., 677-691; 145 U. S., 393-404; 101 U. S., 71; 130 U. S., 1; 139 U. S., 24; 160 U. S., 514; 163 U. S., 564.

Whether the sections of the charter of the Nashville, Chattanooga & St. Louis Railway, above set out, confers upon it the power to purchase other roads is very questionable, yet, as a practical question, it is of little moment, as the general law supplies all deficiencies in this regard. Under it full power is conferred, as below set out.

**1. May purchase, by statute, railroads, franchises, etc.**—Every railroad corporation in this state, whether created under a general or special law, shall have the power to acquire, by purchase or other lawful contract, and have, hold, use, and operate any railroad, with its franchises, belonging to any other railroad corporation; and likewise to have, hold, use, and operate any such railroad, with its franchises, which it may have heretofore purchased or acquired. Acts Tenn., 1871, ch. 69, sec. 1; code Tenn. (Shannon's), § 1509; (M. & V.), § 1250.

This supersedes the act of Tenn., 1871, ch. 22, which act, however, should be examined, as a part of it may still be in force.

**2. May purchase privately or under judicial proceedings.**—Any railroad corporation which has been created, or whose corporate existence has been recognized by any act of the legislature of this state, is hereby authorized and empowered to become purchaser of any railroad sold in this or any adjoining



state under any judicial proceeding in such state, or sold by any person or persons, natural or corporate, who may have purchased or derived title under or from any such judicial sale. Acts Tenn. 1877, ch. 20; code (Shannon's), § 1511; (M. & V.), § 1252.

3. **Purchase carries franchises.**—All the rights, privileges, and immunities appertaining to the franchises sold under the judicial proceedings instituted against delinquent railroads by the state under the act of incorporation, and the amendments thereto, and the general internal improvement law of the state and acts amendatory thereof, shall be transferred to, and vest in, the purchaser, who shall hold the same subject to all the liens and liabilities in favor of the state as now provided by law against the railroad companies. Acts Tenn. 1870-71, ch. 23, § 10; code Tenn. (Shannon's), § 1512; (M. & V.), § 1253.

4. **Purchaser under foreclosure proceedings; rights of.**—The purchasers of any railroad chartered by this state, and lying in whole or in part in this state, sold under any mortgage heretofore or hereafter executed by it, when put in possession of said railroad by any court of competent jurisdiction, shall have the same right to operate the same in this state as the incorporated company which executed the mortgage. Acts Tenn. 1877, ch. 12, sec. 1; code Tenn. (Shannon's), § 1513; (M. & V.), § 1254.

5. **Purchaser under foreclosure proceedings to enforce state's lien; rights of.**—Sale of delinquent railroads by state to enforce its lien transfers road, appurtenances, and franchises to purchaser, and, unless the company was purchaser, to dissolve corporation. 9 Lea (Tenn.), 691; see also 12 Lea (Tenn.), 583, for exemption of purchaser from taxation.

6. **May purchase, build, lease, or sell railroad, or any part thereof, in any state.**—All railroad companies of this state, and any other state or states, are authorized and empowered to build, lease or let, acquire by purchase, lease or otherwise, and operate, hold or dispose of any railroad or railroads in any state or states, or any parts or portions of any such railroad or railroads, and the distribution thereof, as may be determined

upon by their stockholders, and to acquire by purchase or otherwise, and hold or dispose of any bonds or shares of the capital stock of any railroad company or companies in any state or states, and to indorse and guarantee the bonds of any railroad company or companies in any state or states, whose original charter of incorporation was granted by the state of Tennessee; *Provided*, That the same be approved by the vote of three-fourths in amount of the capital stock of said company present and voting, either in person or by written proxy, at a regular or called meeting of the stockholders of said company; *And, provided further*, That sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of the meeting. Acts Tenn. 1881, ch. 9, sec. 2; 1891, ch. 61; code Tenn. (S.), § 1540; (M. & V.), § 1275.

The supreme court of Tennessee has decided that the above act of Tenn. 1881, ch. 9, did not repeal the special limitations imposed by acts of 1877, ch. 72, as to mortgages by consolidated companies. 4 Pick., 140.

**7. May purchase branches and extensions.**—Any and all railroad companies now or hereafter existing under the laws of this state, or of this state and any other state or states, whose charter of incorporation was or may be granted by this state, are hereby authorized and empowered to acquire the line or lines of any other railroad company, either in this state or any other state or states, which may connect with and form parts and parcels, or branches or extensions of the line of such company chartered by this state, or by this state and any other state or states; and are authorized and empowered to so acquire such branches or extensions by purchase, lease, or otherwise, and pay for the same by the issue of their own capital and bonds, or by guaranteeing those issued by the company whose line may be so acquired, purchased or leased; but nothing in this section shall be construed so as to authorize the acquisition in any way by any corporation or company of parallel or competing lines. Acts Tenn., 1891, ch. 125; Code (Shannon), § 1521.

**8. Purchasers of railway at judicial sale may organize into corporate company and operate road, with franchises, rights, powers, etc., contained in charter of original company.**—Whenever the property and franchises of any railroad have been sold, or may hereafter be sold, under any judgment, decree, or process from any of the courts of record of this state for the payment of any debt due from said incorporated company, the purchasers at said sale, or their assignees, may organize into a corporate company or body, with the right to have, hold, and operate the property and franchises so purchased, with all the powers, rights, privileges, and immunities, and subject to all the restrictions imposed by the original charter and amendments thereto, of the corporation whose property and franchises have been sold. Acts Tenn. 1879, ch. 52, sec. 2; code Tenn. (Shannon's), § 1513*a*; (M. & V.), § 1255.

**Purchasers, under foreclosure sale, of part of road cannot be required to build entire line.**—It has been held that, where a railroad company mortgages such a part of its road as is completed, and the mortgage is foreclosed, the purchasers are not required to complete the entire road. 85 Pa. St., 501; Cook on Corp. (4th ed.), sec. 786.

**9. Purchaser at foreclosure sale of railway lying wholly or partly in state becomes vested with franchises, powers, etc., contained in act of incorporation and amendments thereto.**—When a mortgage, executed as provided or allowed by law (acts of Tenn. 1870–71, ch. 116, or other law), upon the franchises, roadbeds, superstructures, and property of every description of an incorporated railroad lying within the state, either in whole or in part, shall be foreclosed in any court of this or of the United States having jurisdiction thereof, by sale under said mortgage, the purchasers at said sale shall be entitled to and be invested with the said franchises and property, and with all the rights, privileges, and immunities appertaining thereto by the laws of this state, in the act of incorporation of said company and the amendments thereto, and the general internal improvement law, or other laws of this state, in as full a manner as the said company or companies are or were. Acts Tenn. 1877, ch. 12, sec. 2; code Tenn. (Shannon), § 1514; (M. & V.), § 1256.



**10. Purchasers may organize new company.**—The purchasers at the sale mentioned in the preceding section may, after being put in possession of said property, meet together, adopt a name for the company or corporation to operate said railroad, and elect a board of directors of not less than three, at least one of whom shall reside in this state. (*Id.*, sec. 3.) Code Tenn. (Shannon), § 1515; (M. & V.), § 1257.

**11. What interest shall entitle to one vote.**—At such meeting every person interested in the said purchase shall be entitled to one vote for every \$100 of such interest, unless the number of votes to which each party shall be entitled, and the mode of representing the interest of the purchasers, shall have been previously agreed upon among the parties interested in the purchase. (*Id.*) Code Tenn. (Shannon), § 1516; (M. & V.), § 1258.

**12. Organization, etc.**—The board of directors shall proceed to elect a president and such other officers as may be expedient for the proper management of said property, fix their compensation and duties, and adopt by-laws for the government of said company, not inconsistent with the laws of this state; and shall fix the amount of the capital stock of said company, and the amount of stock or bonds, or both, which shall represent the interest of said purchasers, dividing such stock into shares of \$100 each. (*Id.*) Code Tenn. (Shannon), § 1517; (M. & V.), § 1259.

**13. Memoranda to be filed with secretary of state. Certificates of organization.**—The said board of directors shall make a certificate showing the name of the corporation, the amount of its capital stock, the shares into which the same is divided, the number and residence of the board of directors, where the road lies, and the name or names by which it has heretofore been chartered and known, and shall cause the same to be signed by the president and the members of such board, and to be filed with the secretary of state of this state, and thereupon the said purchasers shall be a body corporate, under the name so adopted, with all the rights, powers, privileges, immunities, and franchises possessed, under the laws of this state, by the

company or companies whose road and franchises were sold, as aforesaid, under the acts of incorporation thereof, or any amendments thereto, and any subsequent act or acts of this state; and with all the rights, powers, privileges, and franchises possessed by the corporation formed and organized for the building of railroads under the code of this state. (*Ib.*) Code Tenn. (S.), § 1518; (M. & V.), § 1260.

**14. Shares, bonds, etc., to be issued by directors.**—The board of directors shall issue to the parties interested in the purchase of said railroads shares of the capital stock thereof, of \$100 each, to such amount as they shall determine, in proportion to their rights and interests in the property, which shares shall be fully paid, and not liable to calls; and also such bonds and obligations as they may determine. (*Ib.*) Code Tenn. (S.), § 1519; (M. & V.), § 1261.

It is expressly provided that no exemption from taxation, which was granted by the original charters, shall pass to the purchasers at mortgage or judicial sales. Acts Tenn., 1877, ch. 12, sec. 2; ch. 72, sec. 3.

The last five sections are from ch. 12 of the acts of 1877, and relate exclusively to purchasers at sales to foreclose mortgages as provided in sec. 1140 of T. & S's. revised statutes.

**Purchaser gets property free of vendor's debts, when.**—Where one corporation purchases, under legislative authority, the property and franchises of another, it holds the property free from the claims of creditors that were not liens, as if it had been an individual transaction. The statute of most states, however, makes certain claims liens. See 94 Ky., 377.

**Who to authorize stockholders or directors, and vote necessary.**—The acts of Tenn. 1881, ch. 9, as amended by act 1891, ch. 61, is doubtless the controlling act on this subject, and should be followed. See case of *Rogers v. Nashville, Chattanooga & St. Louis Railway*, decided November 9, 1898, by United States circuit court of appeals, sitting at Cincinnati, but not yet reported. Under it the proposition to purchase must be approved by three-fourths in amount of the capital stock of said company present and voting, either in person or by written proxy, at a regular or called meeting of the stockholders, and that sixty days' notice be given in a Memphis,

Knoxville, and Nashville daily newspaper, of the time, place, and purpose of the meeting.

Under the ordinary powers granted a railroad having its termini in this state, the directors have no power to purchase other railroads without the sanction of the stockholders. 8 Bax. (Tenn.), 108.

**Duty of purchasing road to complete and operate entire line of road so purchased considered.**—It frequently happens that one railway company will purchase the property, franchises, etc., of an incompleted road. The question then arises whether or not the purchasing road can be compelled to complete and operate the road so purchased as an entire line between the termini mentioned in its original charter. This is a very serious question, and is one that has received no particular judicial notice in this state. For a discussion of the subject, however, we will divide the purchased roads into two classes. First, those that are chartered under a special act of the legislature, and, second, those that are chartered under the general act.

As to the first class, there is no method of formulating or classifying their provisions, as their forms vary with each particular charter. Some of the special charters make it a condition, or at least an imperative duty, that the road so chartered should be completed and operated to and from the termini mentioned therein. In all such cases it is very clear that a purchaser of the property and franchises of such road can be compelled by mandamus to complete and operate the same throughout its entire line. 91 U. S., 343; 17 Am. L. Reg. (N. S.), 266; 103 N. Y., 95; Elliott on Railroads, sec. 638; 24 L. R. A., 564-8; 113 U. S., 424; 24 N. Y., 261; s. c., 82 Am. Dec., 295; Thompson on Corp., sec. 7826; Rorer on Railroads, p. 572; 29 Conn., 538.

Many of the special charters, however, in so far as the provisions for completing and operating the road is concerned, is similar to that provided in the general act, and hence the discussion of that class will also embrace those.

As to the second class, that is, those chartered under the general act, the law is not so clear. There is no positive require-



ment in these charters that the road shall be completed and operated from and to the points mentioned as its termini. The only provision on the subject is the following: "*Be it known*, That [here insert the names of five or more citizens not under the age of twenty-one years applying for the charter], are hereby constituted a body politic and corporate, by the name and style of [here insert the name], for the purpose of constructing a railway from . . . . ., in the county of . . . . ., to . . . . ., in the county of . . . . . ." Acts Tenn. 1875, ch. 142. Code Tenn. (S.), § 2412; (M. & V.), § 1891.

This section, as will clearly appear, does not, in express words, require the complete construction and operation of the road from and to the points mentioned as its termini, but many decisions of other states hold that, by implication, the language used above is sufficient to warrant that construction. The question has never been passed upon by the supreme court of Tennessee, but doubtless will be construed, when tested, into a mere license or permit, which would not support a mandamus to complete. Elliott on Railroads, sec. 642. See, also, 2 Pick. (Tenn.), 554.

It is very clear that if only a part of the road was purchased the purchasing company could not be compelled to complete or operate the road further than it had purchased. Thus it has been held that where a railroad company mortgaged such a part of its road as was completed, the purchasers under foreclosure proceedings could not be compelled to complete the entire road. 85 Pa. St., 501; Cook on Corp. (4th ed.), sec. 786.

Under the general laws of the State of Tennessee there is nothing to prevent a railroad company from abandoning its entire right of way, though such action would work a forfeiture of its charter, a failure to build the entire line of road, as authorized by its charter, however, is not a ground of forfeiture in this state. It is probable, however, that it cannot abandon a part which has actually been constructed and in operation without such result. 24 N. Y., 161; 82 Am. Dec., 205; 17 Am. L. Ry. (N. S.), 266; 113 U. S., 424; Elliott on Railroads, sec. 638; 2 Barn. & Ald., 646; 36 Wis., 467; 20

N. W. Rep., 696; 24 S. E. Rep., 154; 29 Conn., 538; 142 U. S., 492. But see 12 Gray, 180; 1 Shannon (Tenn.), 511; 120 Ill., 48; Rorer on Railroads, 572; 24 L. R. A., 564. See also 91 U. S., 343; 103 U. S., 95.

Under the acts of Tennessee, 1887, ch. 39, a railroad company may change either terminus before final location of road. This would assist in many cases.

It has been held that where a road is unfinished a court of equity may have it completed by a receiver. 100 U. S., 605.

Railroads chartered under general law in Georgia may change the general direction and route of their road, when and how. See Code, Ga., 1895, § 2171.

**Power of Nashville, Chattanooga & St. Louis Railway over purchased roads.**—Where the railroad, rights, privileges, and franchises of a railroad corporation, whether domestic or foreign, are purchased by the Nashville, Chattanooga & St. Louis Railway, it has the same powers over the line or lines of such roads as the original companies had. If such original companies had the power to lease, sell, mortgage, etc., then the Nashville, Chattanooga & St. Louis Railway, as the legal purchaser thereof, would also be vested with those powers over the lines of such roads as fully and completely as the original companies were. *Rogers v. N. C. & St. L. Ry.*, decided Nov. 9, 1898, by U. S. circuit court of appeals, sitting at Cincinnati, but not yet reported. See, also, 15 Lea (Tenn.), 37; 112 U. S., 610.

**Nashville, Chattanooga & St. Louis Railway may purchase stock in other roads, when.**—See p. 674 herein.

## ALABAMA ACTS AS TO PURCHASING.

[In Alabama]. **Power of Nashville, Chattanooga & St. Louis Railway to purchase roads in Alabama.**—As has heretofore been explained in the preceding chapter on leases, a corporation acting beyond the jurisdiction that created it, in the absence of statute to the contrary, may ordinarily do those things which, by express grant or necessary implication, it is authorized or

empowered to do by the laws of the state granting its charter. 36 Am. & Eng. R. R. Cas., 449; 74 Texas, 474; 8 S. W. Rep., 533; 35 Kan., 236; 10 Pac. Rep., 596; 24 Am. & Eng. R. R. Cas., 34; 3 Head (Tenn.), 337; 72 Ill., 50; 22 Am. Rep., 133; 29 Barb. (N. Y.), 650; Thompson on Corp., § 7920; 1 R. (Ky.), 8.

A corporation cannot by comity, however, exercise powers within the state which a domestic corporation is prevented from exercising under the constitution of the state, nor those things prohibited by statute. 52 Am. & Eng. R. R. Cas., 115; 50 Fed. Rep., 338.

As the Nashville, Chattanooga & St. Louis Railway possesses the power to purchase roads in Tennessee, as heretofore shown, it would follow that it possesses the power in Alabama, in the absence of any legal legislation to the contrary, which does not now exist.

Both roads must have power; one to sell and other to buy.—161 U. S., 686; 97 Ky., 675.

**Domestic corporation of Alabama may sell its property and franchise to foreign corporation.**—Whenever all of the capital stock of a railroad corporation chartered under the laws of this state is owned by a railroad corporation chartered by the laws of another state, it shall be lawful for the domestic corporation to sell and convey to the corporation owning its stock all of its property, roadbed, rights, and franchises; and it shall be lawful also for any railroad corporation chartered by the laws of another state, owning or operating by lease or otherwise any railroad in this state, to purchase at judicial sale or otherwise, or to lease and to hold and use in such railroad, or to acquire, hold and use all or any part of the capital stock or of the property, roadbeds, rights and franchises of any railroad corporation of this state, with whose railroad the railroad of the purchasing or leasing corporation or its predecessor in interest shall be connected, either directly or by means of an intervening line, but the purchasing or leasing corporation shall keep an office and an agent in this state, and such railroad, so purchased or leased, shall be in all respects subject to the laws of this state, as if owned by a domestic corporation, and



all liens and rights of creditors shall be preserved unimpaired, and any and all purchases and leases, such as are authorized by this act, heretofore made are hereby legalized. Acts Alabama, 1898-9, No. 329, p. 28.

**Aid to, or purchase and lease of other roads.**—A corporation chartered under the laws of this or any other state, heretofore or hereafter created for the purpose of building, constructing, or operating a railroad, may, at any time, by means of subscription to the capital of any other corporation or company, or otherwise, aid such corporation or company in the construction of its railroad, for the purpose of forming a connection with the road owned by such corporation or company furnishing aid; or any railroad corporation, organized in pursuance of the laws of this or any other state, may lease or purchase any part or all of any railroad constructed by any other corporation or company, if the lines of such road are continuous or connected, upon such terms and conditions as may be agreed on between the corporations or companies, respectively; or any two or more railroad corporations or companies, whose lines are so connected, may enter into any arrangement for their common benefit, consistent with and calculated to promote the objects for which they were created; but no such aid shall be furnished, nor any purchase, lease, or arrangement perfected, until a meeting of the stockholders of each of such corporations or companies has been called by the directors thereof, at such time and place and in such manner as they shall designate; and the holders of a majority in value of the stock of such corporation or company, represented at such meeting, in person or by proxy, and voting thereat, shall have assented thereto. Code Ala. 1896, § 1170.

Unaided by statute a railroad has no power to lease its road and property: *M. & C. R. Co. v. Grayson*, 88 Ala., 572; *George v. C. R. & B. Co.*, 101 Ala., 607. A lease is invalid until both corporations have held meetings as required and the holders of a majority of the stock have assented. *George v. C. R. & B. Co.*, 101 Ala., 607.

**Same.**—Any railroad company incorporated by the laws of any other state and now owning or operating, or which is or may be authorized to own or operate, by lease or otherwise,

any railroad in this state, is authorized and empowered upon the resolution of its board of directors, to aid any railroad company incorporated under any general or special law of this state, in the construction, renovation, or operation of its railroad, by the indorsement or guaranty of its securities, which have been or may be issued for such purpose, in such manner as may be agreed upon by the board of directors of the contracting companies, or by leasing, or by guaranteeing the rentals of any lease of any such railroad, on such terms as may be agreed upon by the respective boards of directors. Code Ala. 1896, § 1171.

**Lines may be extended, or branch roads acquired or constructed.**—A corporation, now existing or which may hereafter be organized for the building, constructing, and operating a railroad, has authority, for the purpose of extending its line, or forming a connection, to acquire, hold, and operate a railroad without the state; or within the state, may extend its road, or may build, construct, and operate branch roads from any point or points on its line. Code Ala. 1896, § 1172.

A railroad has implied power to construct necessary turnouts and switches, but power to construct a branch is only given by statute. *Arrington v. S. & W. R. Co.*, 95 Ala., 434.

**Mode of making purchase or extension, or of construction, of branch roads.**—Such purchase must be made by resolution of the board of directors, which must be submitted to a meeting of the stockholders, called for the purpose of its consideration; of the time and place of which meeting, and of the purpose for which it is called, thirty days' notice must be given to each stockholder whose residence is known, and by publication for four consecutive weeks in a newspaper published at the principal place of business of the corporation, and, at such meeting, must be approved by the vote of a majority, in value, of the stockholders; and, if such resolution is so approved, a copy thereof, and of the proceedings of the meeting of the stockholders, certified by the president and secretary, under the corporate seal, must be filed and recorded in the office of the secretary of state. Such extension or construction of such

branch road must be made by resolution of the board of directors, to be entered in the record of the proceedings of the corporation, and designating the point from which and the point to which such extension or such branch road is to be constructed. A copy of such resolution, certified by the president and secretary, under the corporate seal, must be filed and recorded in the office of the secretary of state, and thereafter, for the purpose of making such extension or building such branch road, such corporation shall have all the rights, powers, and immunities which are now, or may hereafter, by the laws of this state, be, granted to and vested in railroad corporations under and by virtue of the general incorporation laws of the state. Code Ala. 1896, § 1173.

Before a branch road can be constructed, the prescribed steps must have been taken. *Arrington v. S. & W. R. Co.*, 95 Ala., 434.

**Courts of equity may order sale of railroad, when.**—All courts exercising equity jurisdiction in this state be, and they are hereby, authorized and empowered by decree to order the sale of the property and franchises of quasi public corporations, at the suit of a creditor or creditors having a judgment or decree against such quasi public corporations. Acts Ala., 1898–99, No. 709, sec. 1, p. 98.

**Purchasers at, duties of.**—The purchaser or purchasers under such decree, if not a corporation authorized by the laws of this state to purchase and hold the property of such quasi public corporation, shall, within thirty days after such sale and conveyance, become incorporated, as provided by the general incorporation laws of this state for the incorporation of purchasers under foreclosure sales of the property of like corporations, such purchaser or purchasers to associate with himself or themselves the requisite number of other persons to become incorporated. Acts Ala., 1898–99, No. 709, sec. 2, p. 98.

**Purchasers at, rights of.**—Upon the organization of such corporation, and the conveyance to it of the property and franchises of such quasi public corporation by such purchaser or purchasers, such corporation shall become, and be entitled to, and shall have, hold, and enjoy, all such property rights and franchises. Acts Ala., 1898–99, No. 709, sec. 3, p. 98.



**Purchasers of railroads in Alabama may organize as a corporation; how.**—The purchasers of a railroad existing under the laws of this state, not being less than seven in number, at any judicial sale, or other sale by authority of law, made since the adoption of the present constitution, or which may be hereafter made, may organize as a corporation, entitling themselves, their associates and successors, to all the powers, rights, and capacity of a corporation organized under the provisions of this article. Code Ala., 1896, § 1181.

**Mode of organization.**—Such purchasers must make a declaration, in writing, signed by each of them, stating:

1. The corporate name and style adopted by them.
2. Their names and places of residence, the capital stock of the proposed corporation, and the number of shares into which it is divided.
3. The purpose to organize as a corporation under this article, the property purchased by them, the name of the corporation to which it belonged, and the sale at which they purchased.
4. Such other matters as they may deem it desirable to state; which declaration must be filed and recorded in the office of the secretary of state; and, upon the filing and record of such declaration, the secretary must issue to such purchasers, their associates and successors, a certificate of incorporation, in the manner hereinbefore provided, under the seal of the state, which must be recorded in his office; and thereafter such corporation must be deemed duly organized. Code Ala., 1896, § 1182.

**Purchasers of railroads in Alabama under power in a mortgage or deed of trust.**—The purchasers of a railroad, the property of a corporation, at a sale under a power in a mortgage or deed of trust, or under a decree foreclosing a mortgage, deed of trust, or other security of such mortgage, deed of trust, or other security embraced the franchises of such corporation, are entitled to, and shall have, hold, and enjoy such franchises: *Provided*, They organize as a corporation, under

the provisions of this article, in the mode prescribed in the preceding section. Code Ala. 1896, § 1183.

Consolidation does not operate to bring into existence a new corporation. *Meyer v. Johnston*, 53 Ala., 237; s.c. 64 Ala., 603. Corporation organized by purchasers succeeds to franchises and powers of old corporation; as to ownership of property and liabilities, it is new. *M. & M. R. Co. v. Steiner*, 61 Ala., 559.

## ACTS OF GEORGIA AS TO PURCHASING.

[In Georgia.] **Power of Nashville, Chattanooga & St. Louis Railway to purchase roads in Georgia.**—As has heretofore been explained in the chapter on leasing, a corporation acting beyond the jurisdiction that created it can ordinarily, in the absence of statute, public policy, or judicial decisions to the contrary, do anything in the latter state which by express grant or necessary implication it is authorized or empowered to do by the laws of the state granting its charter. 36 Am. & Eng. R. R. Cases, 449; 74 Texas, 474; 8 S. W. Rep., 533; 35 Kan., 236; 10 Pac. Rep., 596; 24 Am. & Eng. R. R. Cases, 34; 3 Head (Tenn.), 337; 72 Ill., 50; 22 Am. Rep., 133; 29 Barb. (N. Y.), 650; Thomp. on Corp., § 7920; 1 R. (Ky.), 8.

As the power to purchase is possessed in Tennessee, as heretofore shown, it would follow that it is also possessed in Georgia in the absence of statute to the contrary, which does not now exist, save as to the purchase of competing lines.

1. **Both roads must possess power; one to sell and other to buy.**—161 U. S., 686; 97 Ky., 675.

2. A foreign corporation cannot by comity exercise powers within a state which a domestic corporation would be prevented from exercising under the constitution of the state. 52 Am. & Eng. R. R. Cases, 115; 50 Fed. Rep., 338, nor be permitted to do those things prohibited by statute.

3. **Cannot purchase parallel or competing lines.**—Railroads chartered under general laws of Georgia are prohibited from purchasing a competing line of railroad or entering into contracts with them calculated to defeat or lessen competition. Code Ga. 1895, § 2173; nor could the Nashville, Chattanooga & St. Louis Railway do so. See below.

**Railroads chartered under general laws of Georgia may purchase other roads, not competing, etc.**—Said railroad company shall have the power to make contracts with any railroad

company which has constructed, or shall hereafter construct, any railroad within this state, or any other state, that will enable said company to run their roads in connection with each other, and merge their stocks, or to consolidate with any such company within or without the state, or to lease or to purchase the property of any other such company, and hold, use, and occupy the same in such manner as they may deem most beneficial to their interest; *Provided*, That no railroad shall purchase a competing line of railroad or enter into any contract with a competing line of railroad calculated to defeat or lessen competition in this state; and any violation of this section shall subject the corporation to all penalties incident to such violation of the law. Code Ga. 1895, § 2173.

**Railroads chartered under general law may sell or lease their roads to, or consolidate with, other companies.**—Any railroad company incorporated under the provisions of this article shall have authority to sell, lease, assign, or transfer its stock, property, and franchises to, or to consolidate the same with, those of any other railroad company incorporated under the laws of this or any other state, or of the United States, whose railroad within or without this state shall connect with, or form a continuous line with, the railroad of the company incorporated under this law, upon such terms as may be agreed upon; and, conversely, any such corporation organized under the provisions of this article may purchase, lease, consolidate with, absorb and merge into itself the stock, property, and franchises of any other railroad company incorporated under the laws of this or any other state, or the United States, whose railroad within or without this state shall connect with, or form a continuous line or system with, the railroad of such company incorporated under this law, upon such terms as may be agreed upon. And it shall be lawful for any railroad company or corporation now or hereafter formed by the consolidation of one or more railroad companies or corporations organized under the laws of this state, or under the laws of this state and any other states, with one or more companies or corporations organized under the laws of any other state, or under the laws



of this and other states, to issue its bonds and stock, as provided for in this article, in such amounts as they may deem necessary for the purpose of paying or exchanging the same for or retiring any bonds or stocks theretofore issued by either of the said companies or corporations so merged, purchased, or consolidated, or for any other purpose, and to the amount authorized by the laws of the state under which either of said companies or corporations so consolidated was organized, and, to secure the same, in case of bonds, by mortgages or trust deeds upon its real or personal property, franchises, rights, and privileges, whether within or without this state: *Provided*, That no railroad company shall make any contract under the provisions of this section with any other railroad company which is a competing company that is calculated to defeat or lessen competition in this state or to encourage monopoly. Code Ga. 1895, § 2179.

**Purchasers at judicial sales of railroads in Georgia; rights of.**—In case of sale of any railroad heretofore incorporated by virtue of any general or special law, or which may hereafter be incorporated by virtue of this article, or any part thereof constructed or in course of construction, or by virtue of any trust deed, or any foreclosure of any mortgage thereon, or any judicial sale, the party or parties acquiring titles under such sales, and their associates, successors or assigns, shall have or acquire thereby, and shall exercise and enjoy thereafter the same rights, privileges, grants, franchises, immunities and advantages in or by said trust deed enumerated and conveyed which belonged to and were enjoyed by the company making such deed or mortgage, or contracting such debt, so far as the same relate or appertain to that portion of said road or the part or line thereof mentioned or described and conveyed by said mortgage or trust deed and no further, as fully and absolutely in all respects as said railroad company, office-holders, shareholders, and agents of such company might or could have had, had not such sale or purchase taken place; *Provided*, That nothing in this article shall be construed to reserve any exemption from taxation, either state, municipal or county, or any

special rights, privileges and immunities that are not herein authorized to be granted to each and all railroads alike, in conformity with the present constitution of Georgia. Code Ga., 1895; § 2167 (11).

**Purchasers at judicial sales of railroads in Georgia; reorganization of.**—Such purchasers, their associates or assigns, may organize anew by filing a petition with the secretary of state, requesting to be substituted for the original petitioners and stockholders, with all their powers, rights, privileges, duties, and liabilities under this article when said new incorporators may proceed anew by electing new directors as provided by this article, and may distribute and dispose of stock, and may conduct their business generally as provided by this article, and such purchaser or purchasers and their associates shall thereupon be a corporation, with all the powers, privileges, and franchises conferred by, and be subject to the provisions of this section. But no debt, trust deeds, mortgages, or other liens shall be made or created by the first railroad company, or by the purchasers, except on the terms and conditions as prescribed in section 2165. Code Ga. 1895, § 2167 (12).

**Purchasers at judicial sales of railroads in Georgia; how incorporated.**—The application for incorporation by the purchaser or purchasers may be made by said purchaser or purchasers alone, or with such associates as may be desired, and the petition shall set forth only the facts showing the sale and purchase as in this section provided. If the purchasers desire any additional powers not contained in the original charter of the railroad company, but which may be obtained under this article, the said petition shall set forth specifically what additional powers are so desired. The petition shall be verified by one of the purchasers or by his counsel. When the petition is filed as aforesaid, the secretary of state shall examine the same and issue a certificate under the great seal of the state in the form prescribed, varied to suit the particular case. The petitioners shall pay to the treasurer of the state a fee of fifty dollars for this service. Code Ga. 1895, § 2168.

**Contract for conditional sale and purchase of rolling stock, etc.**—Any person or corporation may make a contract in writing with any railroad company or person owning or operating a railroad in this state to furnish said company or person with rolling stock or other equipment, deliverable either immediately or subsequently at stipulated periods; by the terms of which contract the purchase money for said property, in whole or in part, is to be paid thereafter, and in which contract it may be agreed that the title to the property so sold, or contracted to be sold, shall not pass to or vest in the vendee until the purchase money for the same shall have been fully paid, notwithstanding the delivery of such property to and the possession of the same by the vendee; but that until said purchase money shall have been fully paid, the title to said property shall remain in said vendor and his or its assigns. Code Ga., 1895, § 2326.

**Contracts for the lease of rolling stock.**—The manufacturer, owner or assigns of any railroad equipment or rolling stock may make a written contract for the lease of such equipment or rolling-stock to any railroad company or person owning or operating a railroad in this state; and in such contract it shall be lawful to stipulate for a conditional sale of said property to the said lessee on the termination of such lease, and to stipulate that the rental received for said property may, as paid, or, when fully paid, be applied and treated as purchase money, and that the title to such property shall not vest in such lessee or vendee until the amount of such purchase money shall have been paid in full to the lessor or vendor, or to his or its assigns, notwithstanding the delivery of such property to and possession of the same by such lessee or vendee, but that until such purchase money shall have been fully paid, the title to such property shall remain in said lessor or vendor, or in his or its assigns. Code Ga., 1895; § 2327.

**Validity and record of contracts.**—Every such contract hereby authorized shall be good, valid, and effectual to retain the title to said property in said vendor or lessor, or in his or its assigns, as against the said vendee or lessee, and against all



persons claiming thereunder. Such contracts, if made within this state, shall be executed in the presence of, and attested by, or be approved before, a notary public or justice of any court in this state, or a clerk of the superior court. If made without this state, it shall be executed in the presence of, and attested by, or proved before, a commissioner of deeds for the State of Georgia, or a consul or vice consul of the United States (the certificates of the foregoing officers, under their seals, being evidence of the fact), or by a judge of a court of record in the state where executed. Such contract shall be recorded within six months after the date of its execution, in the office of the clerk of the superior court of the county where is situated the principal office, in this state, of the said railroad company. Each locomotive engine and each car so sold, or contracted to be sold or leased, as aforesaid, shall have the name of the vendor or lessor, or the assignee of such vendor or lessor, plainly placed or marked on the same, or be otherwise so marked as to plainly indicate the ownership thereof. Code Ga., 1895, § 2328.

### ACTS OF KENTUCKY AS TO PURCHASING.

[In Kentucky.] **Power of Nashville, Chattanooga & St. Louis Railway to purchase roads in Kentucky.**—As heretofore explained in the discussion of the Kentucky law in the chapter on leases, a corporation acting beyond the jurisdiction that created it can do ordinarily anything which, by express grant or necessary implication, it is authorized or empowered to do by the laws of the state granting its charter, in the absence of statute, public policy, or judicial decisions of the latter state to the contrary. 29 Barb. (N. Y.), 650; 22 Am. Rep., 133; 72 Ill., 50; 3 Head (Tenn.), 337; 24 Am. & Eng. R. R. Cas., 34; 10 Pac. Rep., 596; 35 Kan., 236; 8 S. W. Rep., 533; 36 Am. & Eng. R. R. Cas., 449; 74 Texas, 474; Thompson on Corp., sec. 7920.

As the power to purchase is possessed in Tennessee, as heretofore shown, it would follow that it is also possessed in Ken-

tucky in the absence of any law to the contrary, which does not now exist, save as to the purchase of parallel or competing lines.

1. **Cannot purchase or lease parallel or competing lines.**—It is provided by the constitution of Kentucky that "no railroad, telegraph, telephone, bridge, or common carrier company shall consolidate its capital stock, franchises or property, or pool its earnings in whole or in part, with any other railroad, telegraph, telephone, bridge, or common carrier company owning a parallel or competing line or structure, or acquire by purchase, lease or otherwise, any parallel or competing line or structure, or operate the same." Code Ky., 1894, p. 139, § 201. The state may enjoin such purchasers. 97 Ky., 675.

The word "parallel," as used above, was not used according to its strictly accurate meaning of two roads constructed *equi distant* apart throughout their whole extent, which would be impracticable, but in the sense of two conforming in their general direction. 97 Ky., 675.

2. **Foreign corporations.**—A foreign corporation cannot by comity exercise powers within a state which a domestic corporation would be prevented from exercising under the constitution of the state. 52 Am. & Eng. R. R. Cases, 115; 50 Fed. Rep., 338. Nor do those things prohibited by statute, public policy, or judicial decisions of the latter state.

3. As to whether or not the Nashville, Chattanooga & St. Louis Railway is a foreign corporation in Kentucky, see discussion of Kentucky law in chapter herein on leases. If it is not a foreign corporation, then it possesses the power to purchase under its charter and general amendatory acts of Tennessee, as has heretofore been explained.

4. **Purchasers under foreclosure proceedings; powers of, as well as powers of security holders.** See acts Ky., 1896, p. 29, ch. 21.

5. **Both roads must possess power; the one to sell, the other to buy, in order to make purchase legal.** 161 U. S., 686; 97 Ky., 675.

## CHAPTER LXXIV.

### RULES AND REGULATIONS — WHAT ARE LEGAL — WHO TO ENACT — HOW DIFFER FROM BY-LAWS.

[Generally.] **Railways may make reasonable rules and regulations.**—"All railways have the implied authority, as incident to their corporate character and purposes, to make and enforce all reasonable rules and regulations for the transaction and conduct of their business, which, in their judgment, may

be necessary for the successful, convenient, and safe conduct thereof. Their business implies a degree of authority almost absolute in the management, conduct, and control of their trains and the persons thereon, as necessary for their common safety, and to protect themselves from imposition and wrong." Rorer on Railroads, p. 227; 15 N. Y., 455; 24 Conn., 249; 56 Pa. St., 294; 40 Miss., 374; Elliott on Railroads, secs. 200, 41; 56 Ill., 365; 11 Lea (Tenn.), 98, 533; 13 Lea (Tenn.), 280, 507; 14 Lea (Tenn.), 129; 1 Pick. (Tenn.), 627, 613; 8 Lea (Tenn.), 413; 5 Lea (Tenn.), 124; 8 Lea (Tenn.), 438; 16 Pick. (Tenn.), 213; 110 Ala., 143.

**Rules as to depots and other buildings.**—A railway company may make and enforce, by its agents, reasonable and necessary rules for the transaction of its business, and for the proper and orderly management of its depots and other buildings open to the public. 8 Lea (Tenn.), 413.

A regulation forbidding hackmen, peddlers, expressmen, and loafers from coming within the passenger depot is reasonable. 8 Lea (Tenn.), 413; and a watchman may execute the regulation by reasonable but necessary force. *Id.*

It is also reasonable to require persons in and around the depot building to be orderly, etc. Elliott on Railroads, sec. 200.

**Rules as to tickets.**—A railway company has a right to make regulations requiring passengers to purchase tickets before entering coaches attached to their freight trains, and authorizing conductors to expel persons not having tickets, even though they may offer money in payment of their fare. 5 Lea (Tenn.), 124.

But if company had been usually receiving money on freight trains for fare, passenger is entitled to notice of change before he can be expelled for non-compliance. Same.

Railway may, by a regulation of which the public are duly notified, establish a higher rate of fare if paid on the cars than in the purchase of a ticket for the same trip, but the fare can in no event exceed the charge limited by the charter of the railway. 11 Lea (Tenn.), 98; 95 Ala., 92.

A regulation is reasonable which provides that passengers



shall, on demand, exhibit his ticket on entering the train, and shall afterwards, on like demand, surrender it or pay fare under penalty of removing from car. 14 Lea (Tenn.), 129; Elliott on R. R., sec. 200.

A conductor cannot be required to hear testimony on the subject of a lost ticket, or determine its weight at the peril of the company, under a rule which gives him no discretion. 14 Lea (Tenn.), 129.

**Ladies' car.**—A railway may make and enforce reasonable regulations touching the car in which a passenger may be required to take passage, provided equal and proper accommodations are furnished to all passengers holding first class tickets; and a regulation by which a particular coach of a train is set apart for the exclusive accommodation of ladies and gentlemen traveling with ladies is reasonable. 1 Pick. (Tenn.), 627, 613.

**Schedule regulations.**—A railway may make reasonable regulations for running its trains, and if a purchaser of a ticket has notice of same, or the railway company had given such publicity to same in the ticket office, and by posters in the cars, that a person of ordinary intelligence, by the use of reasonable care and caution, would or might obtain all requisite information, then he is bound by the regulations. 11 Lea. (Tenn.), 533.

Nor will the railway waive its rights under such regulations by the conductor punching and taking up the ticket after having told the holder that the train did not stop at his place of destination, the ticket holder being on a train which, according to the schedule, did not stop there. 11 Lea (Tenn.), 533.

Railway may adopt rule providing that particular trains shall stop only at certain stations, where it furnishes reasonable means of reaching all stations on its road by other trains. 26 S. W. R., 430; 71 Pa. St., 432; 10 Am. R., 711; 52 Ind., 540; 53 Ill., 510; 84 Tex., 678; 52 Am. & Eng. R. R. Cas., 233; 118 Mo., 199.

**Sleeping car regulations.**—A regulation is reasonable that provides that none but holders of first-class tickets shall ride on sleeping cars. 49 Ill. App., 75; 55 Ark., 134; 52 Am. & Eng. R. R. Cases, 224.

**Passenger regulations.**—It is also reasonable to prohibit passengers from riding in the baggage or express cars, or on the engines, platforms, or other improper places of danger. 30 Fla., 1; 52 Am. & Eng. R. R. Cases, 409; 16 L. R. A., 631; 22 Barb. (N. Y.), 91; 155 Mass., 371; 92 Pa. St., 21. Also to prohibit disorderly conduct in cars. 76 Pa. St., 510; 53 Miss., 200; 2 Sumn. (U. S.), 221. Also that passengers shall be seated in the cars while the train is in motion. 15 N. Y., 455; Elliott on Railroads, sec. 200.

Railway not liable for injury to passenger riding on freight train in known violation of rules, with conductor's permission. 10 Pick. (Tenn.), 383; 13 Pick. (Tenn.), 579.

So it is a reasonable rule to require passengers to make a continuous trip, unless they procure a "stop-over" ticket or check. 11 Met. (Mass.), 121; 45 Am. Dec., 190; 54 Wis., 234; 41 Am. R., 23; 28 Barb. (N. Y.), 275; 46 N. H., 213. All persons refusing to comply with rules may be excluded from car or premises.

**Rules as to baggage and freight departments.**—"Like reasonable rules may be made to govern the receipt, carriage, and delivery of freight and baggage, and the shipper may be compelled to conform to them." 40 Miss., 374; 123 Pa. St., 140; 108 N. C., 612; 90 Ga., 694; 44 Ala., 468, cited by Elliott on Railroads, sec. 200.

**Rules governing employees.**—"It is not only the right, but it is also the duty, of railroad companies to promulgate and enforce reasonable and necessary rules for the safety of its employes in the management and operation of its road." Elliott on R. R., sec. 200, citing 116 Pa. St., 628; 126 N. Y., 673; 133 N. Y., 666; 37 Ohio St., 549; 93 Ill., 302; 73 Ind., 261; 100 U. S., 213; 12 Pick. (Tenn.), 129.

These rules must be confined to the management of the company's affairs. The company cannot pass rules regulating right of employes to trade with particular merchants (code Tenn. (S.), § 6882), nor to vote (code Tenn. (S.), § 6884), nor in selecting their physicians (code Tenn. (S.), § 6879), etc.

Employes must obey these rules, or they cannot recover if injured. 13 Lea (Tenn.), 280.

They must know and obey the rules, though they are not held to strict obedience to neglected or disused rules. 12 Pick. (Tenn.), 129.

**Who to enact rules and regulations; how differ from by-laws.**—It has been decided in this state that all by-laws, orders, and resolutions adopted by a railway company are always under the control of a majority of the stockholders, unless expressly provided otherwise by the charter, and may be repealed, altered, or modified from time to time by the majority. 5 Sneed, 566-8. The directors of the Nashville, Chattanooga & St. Louis Railway have authority, however, to pass all by-laws. See discussion under heading, "By-laws," and method of amending them.

There is a distinction between a by-law and a rule or regulation. The former are for the government of the members and officers in their dealings with the corporation, and must be enacted or adopted by the body of stockholders, or directors. The latter, on the other hand, relate to the government of the company's employes and servants, and of passengers and others of the public transacting business with the company, and may usually be made by any officer or agent of the corporation duly authorized to control the business or property to which they relate. Elliott on R. R., sec. 199; 38 S. C., 529. It has even been held that, where a local station agent is given charge of the depot building and station grounds, he may make reasonable rules for the regulation of persons having business to transact with the company, and may exclude persons who refuse to conform to such regulations, and others who come to the station for purposes of their own not connected with the company's business. Elliott on R. R., sec. 303; 7 Met. (Mass.), 596.

**Construction of rules.**—The general rule in Tennessee is that the construction of a written instrument introduced in evidence, if complete and intelligible in itself, is matter of law for the court, expert testimony being admissible in proper cases to aid the court. 13 Lea, 280; 14 Lea, 129; 16 Pick. (Tenn.), 213.



**Car service rules.**—Railways may generally pass such reasonable rules and regulations as to the service of cars as the nature of their business requires. The question, however, as to whether the rules of car service associations for detention of cars and the time fixed for loading and unloading are reasonable, are questions of fact. 98 Ky., 152.

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## CHAPTER LXXV.

*SALES—POWER TO SELL RAILROAD—ROLLING STOCK, FRANCHISES, ETC.—WHO TO AUTHORIZE.*

[In Tennessee.] **Power of Nashville, Chattanooga & St. Louis Railway to sell its railroad franchises, etc.**—It is a well established principle of law that, in order to render the sale by a railway company of its roads, franchises, etc., valid, the power to sell must be conferred upon it either in its charter, amendments thereto, or by the general law. 161 U. S., 677–691; 145 U. S., 393–404; 4 Pick. (Tenn.), 153; 101 U. S., 71; 130 U. S., 1; Jones on Railroad Securities, secs. 1 to 10; 139 U. S., 24; 160 U. S., 514; 86 Tenn., 603; 163 U. S., 564; 88 Tenn., 138, 152; Thompson on Corp., sec. 6137; Elliott on Railroads, secs. 488, 67, 519; 152 U. S., 191. It has been held, however, that this rule does not apply to property not necessary to enable the corporation to perform its duties to the public. 99 U. S., 48, 57; 22 Wall., 527; Elliott on Railroads, sec. 488.

**Charter provisions.**—The only charter provision authorizing the railway to sell is to be found in section 1, page 1, herein, and is as follows: The said railway “shall be capable in law to buy, receive by gift, hold, sell, and convey real and personal estate as hereinafter provided,” etc. This, however, would hardly authorize the sale of its railway, franchises, etc, but would doubtless be held to apply to real and personal estate not necessary to enable the corporation to perform its duties to

the public. There are no amendments to the charter upon the subject.

1. **May sell under the general law, however.**—All railroad companies of this state, and any other state or states, are authorized and empowered to build, lease or let, acquire by purchase, lease or otherwise, and operate, hold, or dispose of any railroad or railroads in any state or states, or any parts or portions of any such railroad or railroads, and the distribution thereof, as may be determined upon by their stockholders, and to acquire by purchase or otherwise, and hold or dispose of any bonds or shares of the capital stock of any railroad company or companies in any state or states, and to indorse and guarantee the bonds of any railroad company or companies in any state or states, whose original charter of incorporation was granted by the state of Tennessee; *Provided*, That the same be approved by the vote of three-fourths in amount of the capital stock of said company present and voting, either in person or by written proxy, at a regular or called meeting of the stockholders of said company; *And provided further*, That sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper, of the time, place, and purpose of the meeting. Acts Tenn. 1881, ch. 9, sec. 2, as amended by acts Tenn. 1891, ch. 61; code Tenn. (S.), § 1540. See 4 Pick., 140.

This act does not expressly authorize a sale, but the use therein of the word "dispose" in its connection, would doubtless authorize it.

2. **Same.**—All corporations now or hereafter existing under the laws of this state, whether incorporated under special or general laws of the state, shall have the power, and they are hereby authorized and empowered, to lease and dispose of their property and franchises, or any part thereof, to any corporation of this or any other state engaged in or carrying on, or authorized by its charter to carry on, in this or any other state the same general business as is authorized by the charter of any such lessor corporation; and said corporations shall likewise have the authority and power, and are hereby authorized, to make

any contract for the use, enjoyment, and operation of their property and franchises, or any part thereof, with any such other corporation of this or any other state on such terms and conditions as may be agreed upon between the contracting corporations; and such lessee corporation, or corporations, is authorized and empowered to make and carry out such leases and contracts; *Provided, however*, That any such leases or contracts when made by or under the direction of the board of directors of the contracting corporations, shall be authorized or approved by the vote of a majority in amount of the stock of the lessor corporation present or represented at a regular or called meeting of the stockholders of said corporation; *Provided further*, That sixty days' notice of such meeting be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place and purpose of such meeting; and, *Provided further*, That where the lessee corporation is a corporation of this state, the authority or approval of its stockholders shall in like manner be obtained to the contract or lease.

This act shall not be so construed as to authorize any corporation of this or any other state to lease or purchase any railroad and line that is a competitor for the same business with any line already owned or under control by lease or otherwise, or two lines of railway that are competitors for the same business in this state. Acts Tenn. 1887, ch. 198, p. 329; code Tenn. (S.), §§ 2043, 2044, 2045, 2046a.

The above act seems to apply particularly to leases, but may be broad enough to cover sales, and hence is inserted here.

**Power to mortgage, however, does not of itself give power to sell.**—4 N. M., 337; 20 Pac. R., 109; Elliott on Railroads, sec. 519; 122 U. S., 561; 4 Pick. (Tenn.), 153.

**Who to authorize, stockholders or directors; vote necessary.**—Each of the foregoing acts make the approval of the stockholders necessary. The act of Tenn. 1881, ch. 9, sec. 2, as amended by acts 1891, ch. 61, however, should be followed, as it is the controlling act. It provides, "That the same be approved by the vote of three-fourths in amount of the capital stock of said company present and



voting, either in person or by written proxy, at a regular or called meeting of the stockholders of said company; and that sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of the meeting."

**Power to sell its purchased roads in Tennessee.**—The Nashville, Chattanooga & St. Louis Railway has purchased many railroads in the states of Tennessee, Alabama, Georgia, and Kentucky, together with their rights, privileges, and franchises. In ascertaining its power now to sell those roads to other companies, regard must also be had to the charters, amendments, and laws of the respective states affecting such roads. In other words, as to the lines of the roads so purchased, the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers and privileges and subject to all the duties and liabilities of the respective original companies. If they had the power to sell, then the Nashville, Chattanooga & St. Louis Railway would also have that power as to those particular lines as fully and completely as the original companies had. *Rogers v. N., C. & St. L. Ry. et al.*, decided November 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which opinion has not yet been reported. See, also, 15 Lea (Tenn.), 37; 112 U. S., 610.

**To render sale legal, vendor company must have power to sell and vendee company to buy.**—161 U. S., 686; 97 Ky., 675.

**Conditional sale of rolling stock and equipments.**—In any written contract of or for the sale of the railroad equipments or rolling stock, deliverable immediately or subsequently at stipulated periods, by the terms of which the purchase money in whole or in part is to be paid in the future, it may be agreed that the title to the property so sold or contracted to be sold shall not pass to or vest in the vendee until the purchase money shall have been fully paid, or that the vendor shall have and retain a lien thereon for the unpaid purchase money, notwithstanding delivery thereof to and possession by the vendee: *Provided*, That the terms of credit for the payment of the pur-

chase money shall not exceed six years from the execution of the contract. Acts Tenn., 1885; ch 96; § 1; Code Tenn. (S.), 3587.

**Same. Leasing clause for conditional sale.**—In any written contract for the leasing or renting of railroad equipments or rolling stock, it shall be lawful to stipulate for a conditional sale thereof at the termination of such lease, and to stipulate that the rentals received may, as paid, or when paid in full, be applied and treated as purchase money, and that the title to such property shall not vest in such lessee or vendee until the purchase money shall have been paid in full, notwithstanding delivery to and possession by such lessee or vendee, subject, however, to the proviso obtained in the above section. Same; § 2; Code Tenn. (S.); § 3588.

**Same. Contract to be probated and registered, and rolling stock branded.**—Every such contract specified in the two preceding sections, shall be good, valid and effectual, both in law and equity, against all purchasers and creditors. *Provided*, First, the same shall be acknowledged by the vendee or lessee before some officer authorized by law to take acknowledgments of deeds in the form required as to conveyance of real estate; second, such instruments shall be registered in the office of the register of the county in which, at the time of the execution thereof, is situated the principal office of the vendee or lessee in this state, and in the office of the secretary of state; third, each locomotive engine or car so sold, or contracted to be sold or leased, as aforesaid, shall have the name of the vendor or lessor, or the assignee of such vendor or lessor, plainly placed or marked on each side thereof, or be otherwise marked, so as to indicate the ownership thereof. Same; § 3; Code Tenn. (S.); § 3589.

Sections four and five of the above act provides that the act shall not apply to sales and contracts made before the passage of this act, and that acknowledgments of such contracts may be made in the form required as to conveyances of real estate.

**Sale of freight for charges.**—See p. 821, *et seq.*, herein.

**ACTS OF ALABAMA RELATING TO SALES.**

[In Alabama.] **Power of the Nashville, Chattanooga & St. Louis Railway to sell its road in Alabama.**—As has heretofore been explained in the chapter on leasing, a corporation acting beyond the jurisdiction that created it can, ordinarily, in the absence of statute, public policy, or judicial decisions to the contrary, do anything in the latter state which by express grant or necessary implication it is authorized or empowered to do by the laws of the state granting its charter. 1 R. (Ky.), 8; 36 Am. & Eng. R. R. Cases, 447; 74 Texas, 474; 8 S. W. Rep., 533; 35 Kan., 236; 10 Pac. Rep., 596; 24 Am. & Eng. R. R. Cases, 34; 3 Head (Tenn.), 337; 72 Ill., 50; 22 Am. Rep., 133; 29 Barb. (N. Y.), 650; Thomp. on Corp., sec. 7920.

As the power to sell is possessed in Tennessee, as heretofore shown, it would follow that it is also possessed in Alabama in the absence of statute, public policy, or judicial decisions to the contrary, none of which now exist.

1. **Both roads must possess power, one to sell, the other to buy.**—161 U. S., 686; 97 Ky., 675.

2. A foreign corporation cannot, however, by comity, exercise powers in a state which a domestic corporation would be prevented from exercising under the constitution of the state. 52 Am. & Eng. R. R. Cases, 115; 50 Fed. Rep., 338; nor be permitted to do those things prohibited by statute.

**Domestic corporations of Alabama can sell their property and franchises to foreign corporations.**—See preceding chapter on "Purchasing." See p. 888, herein.

**Courts of equity may order sales of railroads in Alabama, when.**—See acts of Ala. 1898-99, No. 709, p. 98. See also chapter herein on "Purchasing."

**Power to sell its purchased roads in Alabama.**—The Nashville, Chattanooga & St. Louis Railway has purchased many railroads in the States of Alabama, Georgia, Kentucky, and Tennessee, together with their rights, privileges, and franchises.

In ascertaining its power now to sell those roads to other companies, regard must also be had to the charter, amend-



ments, and laws of the respective states affecting such roads. In other words, as to the lines of the roads thus purchased, the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers, privileges, and franchises, and subject to all the duties and liabilities of the respective original companies. If they had the power to sell, then the Nashville, Chattanooga & St. Louis Railway would also have that power as to those particular lines as fully and completely as the original companies had. *Rogers v. N., C. & St. L. Ry. et al.*, decided November 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which opinion has not yet been reported. See, also, 15 Lea (Tenn.), 37; 112 U. S., 610.

**Power to sell its purchased roads in Alabama.**—The N., C. & St. L. Ry. has purchased many railroads in the States of Alabama, Georgia, Kentucky, and Tennessee, together with their rights, privileges, and franchises. In ascertaining its power now to sell those roads to other companies, regard must also be had to the charter, amendment, and laws of the respective states affecting such roads. In other words, as to the lines of the roads thus purchased, the N., C. & St. L. Ry. would be vested with all the powers, privileges, and franchises, and subject to all the duties and liabilities, of the respective original companies. If they had the power to sell, then the N., C. & St. L. Ry. would also have that power, as to those particular lines, as fully and completely as the original companies had. *Rogers v. N., C. & St. L. Ry. et al.*, decided November 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which opinion has not yet been reported. See also, 15 Lea (Tenn.), 37; 112 U. S., 610.

## ACTS OF GEORGIA RELATING TO SALES.

[In Georgia.] **Power of the Nashville, Chattanooga & St. Louis Railway to sell its road in Georgia.**—As has heretofore been explained in the chapter on leasing, a corporation acting beyond the jurisdiction that created it can ordinarily, in the absence of statute, public policy, or judicial decisions to the

contrary, do anything in the latter state which, by express grant or necessary implication, it is authorized or empowered to do by the laws of the state granting its charter. 1 R. (Ky.), 8; 36 Am. & Eng. R. R. Cas., 447; 74 Texas, 474; 8 S. W. Rep., 533; 35 Kan., 236; 10 Pac. Rep., 596; 24 Am. & Eng. R. R. Cas., 34; 3 Head (Tenn.), 337; 72 Ill., 50; 22 Am. Rep., 133; 29 Barb. (N. Y.), 650; Thompson on Corp., sec. 7920.

As the power to sell is possessed in Tennessee, as heretofore shown, it would follow that it is also possessed in Georgia in the absence of statute, public policy, or judicial decisions to the contrary, none of which now exist, except as to competing lines.

1. **Both roads must possess power—one to sell, the other to buy.**—161 U. S., 686; 97 Ky., 675.

2. A foreign corporation cannot, however, by comity, exercise powers in a state which a domestic corporation would be prevented from exercising under the constitution of the state (52 Am. & Eng. R. R. Cas., 115; 50 Fed. Rep., 338), nor be permitted to do those things prohibited by statute.

3. **Cannot sell to parallel or competing lines.**—Railroads chartered under general laws of Georgia are prohibited from purchasing a competing line of railroad, or entering into contracts with them to defeat or lessen competition, nor can the Nashville, Chattanooga & St. Louis Railway do so. Code Ga., 1895, § 2173. For act, see chapter on "purchasing," herein.

**Power to sell its purchased roads in Georgia.**—The Nashville, Chattanooga & St. Louis Railway has purchased many railroads in the States of Alabama, Georgia, Kentucky, and Tennessee, together with their rights, privileges, and franchises.

In ascertaining its power now to sell those roads to other companies, regard must also be had to the charter, amendments, and laws of the respective states affecting such roads. In other words, as to the lines of the roads thus purchased, the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers, privileges, and franchises, and subject to all the duties and liabilities of the respective original companies. If they had the power to sell, then the Nashville, Chattanooga & St. Louis Railway would also have that power, as to those partic-

ular lines, as fully and completely as the original companies had. *Rogers v. N., C. & St. L. Ry. et al.*, decided November 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which opinion has not yet been reported. See also 15 Lea (Tenn.), 37; 112 U. S., 610.

## ACTS OF KENTUCKY RELATING TO SALES.

[In Kentucky.] **Power of the Nashville, Chattanooga & St. Louis Railway to sell its road in Kentucky.**—As has heretofore been explained in the chapter on leasing, a corporation acting beyond the jurisdiction that created it can ordinarily, in the absence of statute, public policy, or judicial decisions to the contrary, do anything in the latter state which by express grant or necessary implication it is authorized or empowered to do by the laws of the state granting its charter. 1 R. (Ky.), 8; 36 Am. & Eng. R. R. Cases, 447; 74 Texas, 474; 8 S. W. Rep., 533; 35 Kas., 236; 10 Pac. Rep., 596; 24 Am. & Eng. R. R. Cases, 34; 3 Head (Tenn.), 337; 72 Ill., 50; 22 Am., Rep., 133; 29 Barb. (N. Y.), 650; Thompson on Corp., § 7920.

As the power to sell is possessed in Tennessee, as heretofore shown, it would follow that it is also possessed in Kentucky in the absence of statute, public policy, or judicial decisions to the contrary, none of which now exist, except as to parallel and competing lines.

1. **Cannot sell to parallel or competing companies.**—It is provided by the constitution of Kentucky that "No railroad, telegraph, telephone, bridge or common carrier company shall consolidate its capital stock, franchises, or property, or pool its earnings, in whole or in part, with any other railroad, telegraph, telephone, bridge, or common carrier company, owning a parallel or competing line or structure, or acquire by purchase, lease, or otherwise, any parallel or competing line or structure, or operate the same." Code Ky., 1894, p. 139, § 201. The state may enjoin such purchase. 97 Ky., 675.

The word "parallel," as used above, was not used according to its strictly accurate meaning of two roads constructed equidistant apart throughout their whole extent, which would be impracticable, but in the sense of two conforming in their general direction. 97 Ky., 675.

2. **Foreign corporations.**—A foreign corporation cannot by comity exercise powers within a state which a domestic corporation would be



prevented from exercising under the constitution of the state. 52 Am. & Eng. R. R. Cases, 115; 50 Fed. Rep., 338; nor do those things prohibited by statute, public policy, or judicial decisions of the state. 1 R. (Ky.), 8.

3. As to whether or not the Nashville, Chattanooga & St. Louis Railway is a foreign corporation in Kentucky, see discussion of Kentucky law in chapter herein on leasing. If it is not a foreign corporation, then it possesses the power to sell under its charter and general amendatory acts of Tennessee, as has heretofore been explained.

4. The vendor company must have power to sell, and the vendee company to purchase, in order to make sale valid. 161 U. S., 686; 97 Ky., 675.

5. Purchasers under foreclosure proceedings, powers of, as well as powers of security holders.—See acts Kentucky, 1896, p. 29, ch. 21.

**Power to sell its purchased roads in Kentucky.**—The Nashville, Chattanooga & St. Louis Railway has purchased many railroads in the states of Alabama, Georgia, Kentucky and Tennessee, together with their rights, privileges and franchises.

In ascertaining its power now to sell those roads to other companies, regard must also be had to the charter, amendments and laws of the respective states affecting such roads. In other words, as to the lines of the roads thus purchased the Nashville, Chattanooga & St. Louis Railway would be vested with all the powers, privileges and franchises, and subject to all the duties and liabilities of the respective original companies. If they had the power to sell, then the Nashville, Chattanooga & St. Louis Railway would also have that power as to those particular lines as fully and completely as the original companies had. *Rogers v. N. C. & St. L. Ry. et al*, decided November 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which opinion has not yet been reported. See also 15 Lea (Tenn.), 37; 112 U. S. 610.

## CHAPTER LXXVI.

*STATIONS—POWER OF COMPANY TO ABANDON—RULES AND REGULATIONS CONCERNING.*

**Right of Nashville, Chattanooga & St. Louis Railway to abandon, tear down, and remove stations.**—It is a well established principle of law that in the absence of statute of the contrary, a railroad company may locate its stations on the line of its road at such place or places as will best serve its own interests, having regard to those of the public. It can, from time to time, tear down and remove such stations as may have already been built, to more convenient places in the same vicinity, and in some cases to places three or four miles distant. The number, size and locality of the stations are left almost exclusively to the sound discretion of the managers of the corporations, where there is no positive statute to the contrary, and they may remove them to such place or places as an economical administration of their affairs may require. 142 U. S., 492; [35; 1096]; 110 U. S., 667; [28; 291-7]; 104 N. Y., 58, 66; 120 Ill., 48; 132 Ill., 559, 571; 103 N. Y., 195. See also 12 Gray, 180; 18 Minn., 40.

1. **Above law inoperative in Georgia, when.**—The above law would be inoperative in Georgia, inasmuch as the railroad commissioners have power to require the location of such depots, and the establishment of such freight and passenger buildings as the condition of the road, the safety of freight, and the public comfort and convenience may require, upon the giving of such railroad company to be affected thereby the notice as provided. Code Ga., 1895; § 2189.

2. **Inoperative in Kentucky, when.**—It is provided by the Kentucky statutes that "Any company that has established and maintained throughout the year for five consecutive years, a passenger station at a point on its road, shall not abandon such station, nor substantially diminish the accommodations furnished by the stopping of trains thereat, as compared with that furnished at other substantially similar stations on the same road without the written consent of the railroad commission. Code Ky., 1894; § 772.

3. **In Alabama.**—See § 3490 of Code 1896.

4. **In Tennessee.**—By Acts 1897, 113, a railroad commission was created, but was given no power in regard to stations.

**Rules and regulations concerning.**—[See rules and regulations, p. 899, herein.]

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## CHAPTER LXXVII.

### *STOCKHOLDERS—MEETINGS—NOTICE OF—QUORUM—VOTING— QUALIFICATION FOR—WHO MAY VOTE—ELECTIONS AND LAWS AFFECTING GENERALLY.*

**Meetings of stockholders; charter provisions as to.**—Section 9 of the charter provided for the first meeting of stockholders and the election of directors. It further provided that the stockholders should at this meeting fix on the day and place, or places, where the subsequent election of directors should be held, and that such elections should thenceforth be annually made. It was also provided therein that if the day of annual election should pass without any election of directors, the corporation should not thereby be dissolved, but that it should be lawful on any other day to hold and make such elections in such manner as may be prescribed by a by-law of the corporation. Charter, sec. 9, p. 7 herein. This section was subsequently amended, however, by the acts of Tenn. 1857-58, ch. 8, so that the stockholders could at any meeting fix on the day and place where subsequent meetings of stockholders and election of directors shall be held. Acts Tenn. 1857-58, ch. 8.

**General and annual meetings; by-laws as to.**—In pursuance of the charter provisions, the railway company has passed the following by-laws as to stockholders' meetings:

1. **Time and place of holding.**—A general meeting of the stockholders shall take place annually, on the first Wednesday



after the second Tuesday of September, in the city of Nashville, at which an election for fifteen directors of the company shall be held. Notice shall be given by publication in one or more of the newspapers of the state, as may be ordered by the board of directors.

2. **Adjourned meeting.**—Should the time fixed for the annual election of directors pass without an election being effected, the same may be held on such subsequent day as may be designated by the board of directors, or by the stockholders at a general meeting, notice of which election shall be given in the manner aforesaid.

3. **Officers hold till successors elected.**—In all cases the directors for the time being, and the officers elected by them, shall continue in office until their successors shall be elected.

4. **Quorum.**—The presence, in person or by proxy, of those who are the owners of a majority of the stock of the company shall be necessary to constitute a legal meeting of the stockholders, authorized to transact business. See p. 646 herein.

**Special meetings; who may call and for what purpose.**—The charter provides that the board of directors shall have power to call a general meeting of the stockholders when they may deem it expedient. Charter, sec. 18, p. 11 herein.

There is no by-law of the company providing for the call of special meetings of stockholders. The call of regular meetings is provided for, but not special. This being so, the board of directors alone have power to call special meetings. This can be changed, however, by subsequent by-laws, should it be deemed advisable.

The by-laws, however, provide for special meetings of the directors. See p. 647 herein.

**Notices of special and regular meetings.**—Notice should always be given to each stockholder of all special meetings, in order to make them legal. As to regular stated meetings, fixed by the charter or by-laws, it is generally different. As to them, no notice need be given, unless specifically required by statute or by-law, for members are bound to take notice of them. 22 N. Y., 128; 35 Ohio St., 10; 11 Vt., 385; Elliott

on R. R., sec. 164; Thompson on Corp., sec. 708; 53 Am. Dec., 450; 8 Fed. Rep., 66; 11 Pick. (Tenn.), 484, 485.

The by-laws, however, of the Nashville, Chattanooga & St. Louis Railway require that notice of general meetings of stockholders shall be given by publication in one or more of the newspapers of the state, as may be ordered by the board of directors. No extra notice need be given of adjourned meetings however. Thomp. on Corp., sec. 720.

**Length of time notice must be given for regular and special meetings.**—The by-laws provide that notice of general meetings shall be given by publication in one or more of the newspapers of the state, as may be ordered by the board of directors, but specifies no length of time. Reasonable time should be allowed, however, so as to enable all the stockholders to receive the notice and reach the place of meeting in ample time therefor. The word general meeting in the above by-laws is intended for regular meeting.

In addition to the above by-law upon the subject the statutes of Tennessee, Alabama, Georgia, and Kentucky require that specified lengths of time shall be allowed for notices for particular purposes, even though the business is to be transacted at a regular meeting. Thus to mortgage, sell, or purchase a railway in Tennessee the law requires that sixty days' notice be given in a Memphis, Knoxville, and Nashville daily newspaper of the time, place, and purpose of the meeting, whether regular or called meeting. The laws of Alabama, Georgia, and Kentucky have also provisions regulating mortgages, sales, leases, purchases, etc., of railways in those states, all of which is set out herein under their particular heading. For length of notice, therefore, in each particular instance, see discussion under its particular heading herein.

As to special meetings, the length of notice is generally fixed by statute where the meeting is for some purpose other than the transaction of its ordinary affairs, as, for instance, the mortgage or purchase of a road. The length of notice in all such cases can be found in the discussion of the particular heading. If the special meeting is to transact ordinary business, then reasonable notice alone is sufficient.

**When notice must state object of meeting.**—"If a particular day in each year is appointed for the transaction of all business, a notice of the particular business to be done is not necessary [unless required by statute—as, for instance, in the cases of sales, mortgages, etc., as heretofore pointed out]. It has been reasoned that where the statutory provisions in regard to annual meetings are general, such meetings are, *ex vi termini*, for the transaction of all business incident to the corporate powers and interests. 36 Me., 78; 22 N. Y., 128. Moreover, the notice of a special meeting, when it is held for the transaction of ordinary business, need not state the object of the meeting. But where the meeting is called for the purpose of transacting business of special importance, not within the general routine of corporate business, upon a day not expressly set apart for that particular transaction, unless the notice of the meeting stated the nature of such business, all acts done thereat will be voidable, if not absolutely void." Thompson on Corp., sec. 717. See 11 Pick. (Tenn.), 486, 487.

**Quorum; what number necessary.**—The by-laws of the company provide that "the presence, in person or by proxy, of those who are the owners of a majority of the stock of the company shall be necessary to constitute a legal meeting of the stockholders authorized to transact business." (See p. 646 herein.)

At stated annual meetings a majority of those present may act. Thompson on Corp., sec. 726; 92 Mo., 79; 11 Am. Rep., 253. See 11 Pick. (Tenn.), 485-487.

**Adjourned meetings.**—It is a well established principle of law that should the business of a regular or called meeting not be completed on the day set, the meeting may be adjourned to a subsequent day, and no new notice thereof need be sent to the members. 21 N. Y., 296; 11 Vt., 385; Thompson on Corp., sec. 720. It is always better, however, to renotify, as some authorities hold it is necessary.

**Meetings out of state.**—It may be generally said that no corporation can hold a legal meeting of its stockholders out of the state of its creation, and that all votes and proceedings had thereat are void. Thompson on Corp., sec. 696. Directors,



however, may meet anywhere. 34 N. Y., 208; 45 Ga., 34; 35 Mo., 13; 63 Barb., 415; Rorer on Railroads, p. 211; Thompson on Corp., sec. 3933.

The supreme court of the United States has held, however, that proceedings at stockholders' meetings are binding upon all those participating, though held without call or notice, and outside of the state where the company was incorporated, if there is no statutory restriction of corporate action to the limits of the state. 139 U. S., 417; [35; 229.] Of course those not present and participating would not be bound, however, and could vitiate the proceedings.

**Election of directors.** (See Directors, how chosen.)

**Judges and clerks of election.**—The directors have power to appoint three judges and two clerks to hold the election for directors. Acts 1847–8, ch. 70, sec. 2.

**Voting; proxies; scale; how taken.**—Section 20 of the charter provides that “stockholders may vote in person or by proxy, and in the election of directors, and in voting on all questions which come before a meeting of stockholders, or which may be submitted to their decision in any other manner, that the vote should be taken according to a scale therein set out,” but by acts of Tennessee, 1868–9, ch. 2, p. 83, this section was amended, and the amendment accepted by the company September 20, 1875, so as to provide that thereafter “in all elections held by the company every stockholder shall be entitled to one vote for each share of stock owned by him.” In the election of directors, therefore, as well as in all other elections, each stockholder is now entitled to as many votes as he has shares of stock.

This amendment was valid. See case of *Rogers v. N., C. & St. L. Ry.*, decided, November 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but which has not yet been reported.

**Qualifications of stockholders to vote at elections.**—Under the charter no stockholder is allowed to vote in any general or other election who shall not have held in his own right the share on which he offers to vote at least three months previous to such election. Charter, sec. 19, p. 12 herein.

A proper construction of this section would require that the stockholder should hold his stock continuously for the three months preceding the election in order to vote it.

**Stockholder not disqualified to vote because interested in subject-matter of resolution or election.**—Directors and stockholders stand upon different footing so far as their right to vote is concerned. The former cannot vote where they are personally interested in the result. They are trustees for the stockholders and must act for them and not for themselves. They are comparatively few in number and expressly intrusted with the management of the corporate affairs. The stockholders, on the other hand, may be very numerous and run up into the millions. They may be of different nationalities, and scattered over the face of the earth. “An investigation, therefore, into their various personal interests would not only be difficult, but almost impossible, and great uncertainty would result if the validity of acts of the majority were made to depend upon such an investigation.” It has therefore been held, says Mr. Morawetz, for reasons of convenience amounting to a practical necessity, that shareholders in a corporation are not disqualified from voting at a general meeting by reason of their individual interests in the result of the vote. Morawetz on Corp., § 477.

Of course, however, should the majority attempt to appropriate the corporate funds, depart from the company's charter or perpetrate a fraud, the courts would not hesitate to interfere at the suit of any aggrieved stockholder. Morawetz on Corp., sec. 477; 96 N. Y., 444; 35 Hun., 355; 18 Ohio St., 169; 40 Cal., 20; 13 Am. & Eng. R. R. Cas., 94, 107; 104 U. S., 450-60; 110 U. S., 209; Thompson on Corp.; § 4481.

**Who may vote.**—All the stockholders of a corporation, who rightfully appear as such upon the books of the company, and where the charter or amendments thereto allow one vote for each share, have an equal right, in proportion to the number of shares owned by them, to vote their shares in all meetings of stockholders, both general and special, and, to a like extent, take part in the business of such meetings. This is so even though nothing has been paid in on their subscription. 3 Zab. 3.

(N. J.), 66; 6 Wend., 509; 20 La. Ann., 489; 42 Conn., 560; Rorer on Railroads, p. 192.

The charter of the Nashville, Chattanooga & St. Louis Railway originally provided for a scale of voting, but by acts of Tenn. 1868-9, ch. 2, sec. 4, it was amended so as to allow one vote for each share of stock. The amendment was accepted by company September 20, 1875, and held legal in the case of *Rogers v. N., C. & St. L. Ry. et als.*, decided November 9, 1898, by the United States circuit court of appeals, sitting at Cincinnati, but not yet reported.

**Same. Where shares are held by two or more persons jointly.**—"The general rule being that the right to vote follows the legal title to the shares, it follows that, where the title to the shares is vested in two or more persons, jointly, there can be no vote cast in respect to them without the concurrence of all the joint owners." 149 Pa. St., 70; 24 Atl. Rep., 88; Thompson on Corp., sec. 3871.

**Same. Where stock pledged or mortgaged.**—"The general rule is, as stated above, that the right to vote follows the legal title and this rule is believed to obtain in all cases where it has not been changed by a valid statute, by-law, or contract. Shares may be transferred for the purpose of securing a debt, but under a form of conveyance which operates to pass the legal title to the transferee, and to give him the right to have the shares registered in his name on the books of the corporation, in which case the right to vote them will vest in him, provided he has the transfer made on the books of the corporation; otherwise, the pledgor or mortgagor would be entitled to vote, as the stock would appear in his name. The inspector of elections should look alone to whose name appears on the books in determining who has the right to vote the shares. If other parties claim the right to vote the shares they must enforce the right in a court of equity." Thompson on Corp., secs. 3872, 732. See, also, 12 Pick. (Tenn.), 253.

**Same. Where shares held by surviving partner.**—"A surviving partner has the right, while the partnership business remains unsettled, to vote the stock standing in the name of the



firm, or which, though standing in the name of the deceased partner, it is shown actually to be firm property." Thompson on Corp., sec. 731; 16 Cal., 113.

**Same. Where owner dead.**—"Where the owner of shares in a corporation dies without leaving a will, his administrator can vote the shares upon exhibiting his letters of administration, and this, too, without any formal transfer of the shares on the books of the corporation. Where he leaves a will, and the legal title to the shares is vested in an executor, the executor has the right to vote them on exhibiting an exemplified copy of his testamentary letters. If vested in two or more executors jointly, however, they all must concur or no vote can be cast." Thompson on Corp., secs. 3871, 731.

**Same. Where shares held by other corporations.**—Where the power is conceded, either by statute law or by judicial construction, to exist in one railway corporation to hold shares in another, the right to vote the same would also exist as an incident of ownership. But in the absence of legislative authority, it is against public policy to allow one corporation to purchase a majority of the shares in another for the purpose of absorbing it, controlling it, and effecting an unlawful consolidation with it. Thompson on Corp., sec. 3873; 88 Ala., 630; S. C. 16 Am. St. Rep., 81; 7 South. Rep., 108; 50 Fed. Rep., 338.

Under the general laws of the state of Tennessee it is provided, however, that "any railroad company created by and existing under the laws of this state, and for any lessees of a railroad of such company, from time to time, to subscribe for or purchase the stock and bonds, or either, of any other railroad company or companies chartered by or of which the road or roads is or are authorized to extend into this state, when their roads shall be directly, or by means of intervening railroads connected with each other. Code Tenn. (M. & V.), § 1262; (Shannon's) § 1520. See also discussion of this subject under general heading "Stockholders—right to vote."

**Same. Where shares are owned by corporation itself.**—"It sometimes happens that a corporation acquires shares of its

own stock from defaulting shareholders by forfeiture or by sale to foreclose their lien upon them, but stock thus owned or held by the corporation cannot be voted at corporate elections, although it may be held by a trustee in pledge to secure a debt under a contract which allows him to vote it." 37 Cal., 15; 5 Cow. (N. Y.), 426; 101 Mass., 398; 92 Mo., 635, cited by Thompson on Corp., § 734.

**Same. Where shares are held by receiver.**—The right of a receiver of stock to vote it is not questioned by any authorities, and it has been held that the court appointing him may direct him how to vote it. Elliott on R. R., sec. 158; Cook on Stock and Stockholders, § 612; 25 Abb. N. C. (N. Y.), 274, note.

**Same. Where shares are held by trustee.**—"If the stock is registered in the name of the holder as trustee, he may vote it, unless he be a trustee for the corporation itself, in which case the officers are chargeable with notice of the title he holds, and his holding is subject to the rule that stock owned by the corporation itself cannot be voted." Elliott on R. R., sec. 158; 6 Wend. (N. Y.), 509; 5 Cow. (N. Y.), 426; 101 Mass., 398; 37 Cal., 15; Thompson on Corp., sec. 731.

If he holds the stock as trustee the company should not transfer the shares for him, however, without requiring him to show his authority to sell under the trust. [See "Capital Stock" subhead, "How Transferred," pp. 670, 672, herein].

**Same. Where shares are in name of partners.**—Either partner may vote the shares held by the firm.

**Same. Where shares in name of "A. B., Cashier."**—"Stock standing on the corporate books in the name of A. B., with the addition of "Cashier" subjoined, cannot be voted on a proxy given by his successor in office." Thompson on Corp., § 731; 19 Wend. (N. Y.), 135.

**Who elected.**—The person, or persons, receiving a majority of the votes cast is duly elected. If the persons receiving the majority vote are incompetent to hold the office of directors, in such a case a majority vote defeats the election of the minority candidates, if cast against them, although such vote be cast for

ineligible persons, and therefore has no affirmative effect to confer the office on those voted for. It is the majority or plurality of votes cast for a party that elects him, and not the incompetency of his opponent. Rorer on R. R., p. 89; Thompson on Corp., sec. 781; 20 La. An., 489.

**When the president fails to call election, or old officers hold over; costs.**—It is provided by the general law that when the board or president and directors of any railroad company incorporated by the laws of Tennessee, or any other officer of such company whose duty or power it may be by the terms of the charter or by-laws of said company to call the meeting of stockholders thereof, for the purpose of electing a board of directors, managers, or other officers of such company, shall fail to make such call in the time and manner necessary to have such election at regular time; or if any such board of directors, president, or other officer to be elected by the stockholders of such company, or any portion of them, shall assume to hold or exercise their office as such beyond the regular time for which they were elected, then it shall be lawful for any one or more of the stockholders of said company to call a meeting of the stockholders therein, by giving notice for the length of time, and in the manner prescribed by the charter, of the object and place of such called meeting, and the stockholders assembled in pursuance of such call, by one or more stockholders, shall be competent, upon the terms hereinafter prescribed, to elect a board of directors, managers, or other officers, as though they had been regularly called for the purpose by the officer or authority whose duty or power it was so to do. In all meetings herein provided for there shall be represented, directly or by proxy, a majority of all the stock of the company which had been subscribed up to the day on which the regular term expired, for which the incumbent overholding board of president and directors were elected. All costs incident to the calling of such stockholders shall be at the individual expense of the party or parties so calling and not chargeable to the company. Code Tenn. (M. & V.), § 1238; acts Tenn. 1868–69, ch. 27, sec. 1; [Shannon's code, § 1491].



**Two or more calls; place and time of meeting.**—In case there should be more than one call for a stockholders' meeting, and different places should be designated for such meeting in the different calls, some house shall be selected for the meeting in the town or place where the principal office of the company is established, and, if such office is nowhere established, then some house in the town or place where the last like election was held; and the call designating the earliest period for the meeting, allowed by the requirements of the company charter as to notice, shall always control and prevail as to the time for such meeting. Code Tenn. (M. & V.), § 1239; acts Tenn. 1868-9, ch. 27, sec. 2 [Shannon's code Tenn., § 1492].

**Stockholders may petition judge or chancellor.**—When a meeting of stockholders in any railroad company shall be called under these provisions, any one or more of the stockholders making such call may apply, either in open court or at chambers, to the judge of the circuit court wherein is situated the town or place designated for such stockholders' meeting, by petition duly sworn to and setting forth all material facts; and should there be, for the time, no such circuit judge, or should he, from absence or other cause, be unable to act, then, in like manner, to the chancellor of the district in which is the place designated for such meeting, and, after five days' notice, by the delivery of a copy of the petition filed in the premises to the acting president, secretary, or treasurer of the company, or to any member of the overholding board. If the material allegations of such petition be not directly denied by answer of such overholding board of president and directors, duly sworn to, or if such judge or chancellor be satisfied of the fact that such directors or officers, or any portion of them, are holding over beyond the regular term for which they were elected, or that there has been failure to give the required notice, under the company's charter, for the stockholders' meeting to elect their successors at the regular time therefor, then it shall be the duty of the said circuit judge or chancellor, conforming to the requirements as to the time and place of meeting provided for above, upon such application therefor, to appoint, by order

in writing, three competent judges to hold such stockholders' election, and cause them to be duly sworn to hold the same faithfully, impartially, and in accordance with law, at the time and place designated in their appointment. Code Tenn. (M. & V.), § 1240; acts Tenn. 1868-9, ch. 27, sec. 3 [Shannon's code Tenn., § 1493].

**Order to be recorded.**—The order of such judge or chancellor, together with the oath as taken by such election judges, shall be entered by the clerk upon the minute book of this court as an order of the court, in term or at chambers, as the case may be, and such entry shall be evidence on trial of all causes in this state as other records of the same court. Code Tenn. (M. & V.), § 1241; [Shannon's code, § 1494].

**Election; how conducted.**—The election shall be held at the time and place designated by the appointing judge or chancellor, and he shall also appoint, with such election, judges and clerks or other assistants he may deem necessary for properly holding or reporting such election. Code Tenn. (M. & V.), § 1242; [Shannon's code, § 1495].

**Oaths.**—The clerks or other assistants so appointed shall be duly sworn to faithfully perform the duties as such; and the judge or chancellor shall, upon motion, make all necessary orders upon the acting secretary or other officer in charge of the books or stock subscriptions of such company, to file with the clerk of his court a true and correct list of all stockholders in the company, the number of shares owned by each, whether subscribed or transferred, and the respective dates of such subscription or transfer, which list shall be for the information of the judges of election in holding the same. Code Tenn. [M. & V.), § 1243; [Shannon's code, § 1496].

**Election, how held; record of meeting.**—The election shall be held by the judges herein provided for, in the method and on the terms prescribed for like elections by the charter of the company, and if no method be so prescribed, then the election shall be by ballot, and the judges thereof shall make out an accurate list of all stockholders voting in such election, either directly or by proxy, and of all votes rejected by them, to-

gether with a correct statement of the results of such election, which list and statement of results shall be certified by the election judges to the clerk of the court, held by the judge or chancellor appointing them, and entered upon the minute book of his court for inspection by any stockholder. Code Tenn. (M. & V.), § 1244; acts Tenn., 1868-69, ch. 27, sec. 4; [Shannon's code, § 1497].

**Compensation of clerk; transcript is evidence.**—The clerk shall receive for such entry the compensation established by law for copying record matter. Attested transcript of such entry shall be evidence in all courts of this state, as the duly taken depositions of such election judges, but shall not be of the conclusive nature of other records of such court. Code Tenn. (M. & V.), § 1245; [Shannon's code, § 1498].

**Certificates of election and qualification of officers-elect.**—The judges of the election shall issue certificates of election to the persons receiving the greatest number of votes cast, or the number required by the terms of the company's charter, as the case may be, and such certificate shall entitle the persons so certified as elected to immediately qualify as directors, managers or other officers accordingly as they were elected, and they shall be and continue such directors, managers, or officers of the company for which they may be elected for the period of time prescribed by such company's charter, reckoning the time from the day of their election, with all the rights and powers in full permitted by the charter of the company, and the privilege of enforcing such rights and powers in any manner allowed by the laws of this state. Code Tenn. (M. & V.), § 1246; [Shannon's code, § 1499].

**May take charge of all papers, books, etc.; refusal to surrender same; proceedings against overholding board.**—Any directors, managers, or officers elected hereunder may, upon their organization as required by their company charter, demand and receive of the overholding board of the president and directors or managers, and of any person whomsoever, all books, papers, property, and effects belonging to the company, and proper to be possessed and controlled by the board of pres-



ident and directors, managers, or other officers, upon such demand and production of their certificates of election; if any person whomsoever, having possession thereof, shall refuse to deliver to the parties so demanding all such books, papers, property, and effects, then the parties so elected may file their petition, duly sworn to, setting forth such demand and refusal and other material facts, making the proper parties defendants, and praying for the necessary relief in the circuit court for the county, or chancery court of the district, wherein their election was made. Code, Tenn. (M. & V.), § 1247; acts Tenn., 1868-9, ch. 27, sec. 5; [Shannon's code, § 1500].

**Petition and proceedings thereon.**—Upon the filing of such petition, if therein prayed for, or at any time thereafter, upon the motion of the petitioners, either in open court or at chambers and five days' notice to defendant, the judge or chancellor of the court in which the same may be filed shall, upon petitioners entering into bond with security for the proper indemnity of defendants, in the amount and condition directed in his sound discretion, cause to be issued and properly directed all writs, used by either, or both, of such circuit or chancery courts, whether such writs be in the nature of writs of attachment, writs of replevin, writs of possession, or injunction, or of any other character which may be essential to right and justice in the premises; and to this end all necessary power and jurisdiction is hereby conferred upon such courts. Such courts may also appoint receivers. Code Tenn. (M. & V.), § 1248; [Shannon's code, § 1502].

**Proceedings according to course of chancery court.**—Copy of petition, with subpoena to answer, shall be served upon the defendants, and the cause, excepting so far as differently provided for herein, be carried on in due course, as required by the rules of practice governing other suits of an equitable nature in the court to which the same may be brought. Code Tenn. (M. & V.), § 1249; see, also, 9 Bax., 522; [Shannon's code, § 1503].

**Stockholder's right to inspect books.**—“A stockholder is entitled to inspect the corporate books at reasonable intervals

and times, either in person or by an expert or an agent, when he is too ignorant to do it himself intelligently. The directors cannot exclude a member from this right because his motives are hostile to the interests of the corporation, and he may enforce the right by mandamus." Elliott on Railroads, sec. 172, citing 8 Bax. (Tenn.), 108; 53 Mo. App., 542; 113 Pa. St., 563; 33 N. Y. Supp., 244; 29 Mo. App., 326; 50 Barb. (N. Y.), 280; 105 Pa. St., 111; 86 Ala., 467.





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